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ROYAL COMMISSION
ON
CO-OPERATIVES

1945

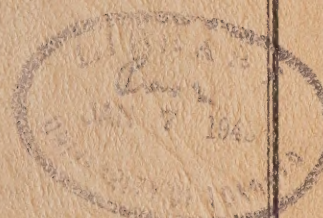
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ROYAL COMMISSION ON CO-OPERATIVES

Ottawa, Saturday, April 21, 1945.

VOLUME XXIII

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ROYAL COMMISSION ON CO-OPERATIVES

The Commission appointed to inquire into the present position of Co-operatives in the matter of income and excess profits tax, organization and business methods and operations, and the comparative position of persons engaged in business directly competitive therewith, met in Ottawa on Saturday, April 21, 1945.

PRESENT:

The Hon. Mr. Justice ERROL M. McDOUGALL, Chairman

B. N. ARNASON	}	Commissioners
G. A. ELLICOTT		
J. M. NADEAU		
J. J. VAUGHAN		
Eugene T. Parker, K.C.		Counsel
Major H. D. Woods	}	Associate Registrars
J. A. Chapdelaine		
Colonel G. W. Ross	}	Executive Secretary

APPEARANCES:

W. B. Francis	Group of Co-operative Associations	
W. H. Howard, K.C.	Private Grain Interests	
W. P. Fillmore, K.C.	Private Grain Interests	
R. H. Milliken, K.C.	Saskatchewan Co-operatives	
G. W. Mason, K.C.	American Reciprocal Association	
V. Evan Gray, K.C.	Factory Mutual Fire Insurance Companies	
Hon. S. A. Hayden, K.C.	American Mutual Alliance	
N. S. Robertson	Ontario Cash Mutuals	
Russell McKenzie, K.C.	Canadian Board of Marine Underwriters	
J. A. Mann, K.C.	}	Joint Stock Companies
Aime Geoffrion, K.C.		
A. Leslie Ham		

Ottawa,
Saturday,
April 21, 1945.

The Commission met at 9.30 a.m., Mr. Justice McDougall presiding.

A. LESLIE HAM, examination continued.

BY MR. ROBERTSON:

Q. Mr. Ham, on page 28 of the second edition of your brief, in quoting (e) and (f) of the Ontario Cash Mutual brief, you make this statement:

"It is submitted that the allegations are completely unfounded in fact."

You observe where that appears in your brief? A. Yes, I see it.

Q. The reference is, for example, to the second sentence in (e): "In entering the fire insurance field the stock companies approached the public with the cry that the mutuals policy holders' liability was never fixed." You say that our statement to that effect is wrong? A. It depends on what you mean, whether the stock companies themselves did that. I presume it has been done; possibly that is the cry of the agents in competition for business.

Q. But not the company? A. Not to my knowledge.

Q. The United States Fidelity and Guaranty Company is one of your clients? A. Yes.

Q. They are on the list of companies? A. That is right.

Q. You recognize that? A. No.

Q. You don't recognize it? A. No.

MR. PARKER: What is "that"?

MR. ROBERTSON: This is a brochure setting forth the very matters referred to in the portions quoted from the Ontario brief. I would like to submit it.

MR. PARKER: Who is the author?

MR. MANN: It is a photostatic copy of something.

MR. ROBERTSON: It is a photostatic copy of a brochure circulated in Ontario against the Ontario Cash Mutuals.

MR. MANN: Perhaps it had better be read by the Commission. The United States Fidelity and Guaranty Company is one company out of 257.

MR. ROBERTSON: I suggest that it be filed.

MR. PARKER: Mr. Robertson should at least tell us who the author is and give us a description of the document. He said it was circulated in Ontario. I do not know whether it was or not.

THE CHAIRMAN: Does it make proof to put it in like that?

MR. ROBERTSON: I doubt whether it makes proof that would be accepted in a court of law.

THE CHAIRMAN: We will allow the production of it. We have allowed the production of everything so far.

MR. PARKER: I am not objecting to the production of it; I simply ask Mr. Robertson to tell us what it is.

THE CHAIRMAN: What is the point you wish to make in putting in the document, Mr. Robertson?

MR. ROBERTSON: The point is in regard to the statement contained in Mr. Ham's brief. That is the kind of thing that was circulated in Ontario against the Ontario cash mutuals, and it contains the very allegations set out in the Ontario Mutuals brief. That is all.

MR. MANN: I shall have to put myself on record as objecting to the production of a photographic copy of something which I have not had time to read, and specifically to the statement of my learned friend that it is the kind of document that was circulated as against his clients or any of the other mutuals.

THE CHAIRMAN: That fact is not established. You might refer to the particular section of the brochure, Mr. Robertson, and leave it at that.

MR. MANN: Are you prepared to prove that it was circulated by the company? It might have been circulated by some obscure brokerage firm or agency.

MR. ROBERTSON: I do not think there is anything obscure about United States Fidelity and Guaranty Company.

MR. MANN: I am referring to the circulation of the document, not the name that appears on it.

MR. ROBERTSON: I might read a section from page 2:

"The mutual company employs no capital in its business. It is organized and incorporated on a purely cooperative basis, each member being 'personally liable' for his share of the losses. When you purchase insurance in a mutual casualty company you become a partner in the business; you may secure dividends, but you are liable for your pro rata share of the liabilities of the company. In other words, the losses of a mutual company are paid by the policy holders, not the stockholders, as there are no stockholders.

THE CHAIRMAN: What is the brochure entitled? What caption does it bear?

MR. ROBERTSON: "Why eighty per cent of the nation's fire and casualty insurance is written in stock companies." I submit that it should be filed.

MR. MANN: De bene esse.

ALEXANDER HURRY,

Canadian Manager,
Northern Insurance Company,
having been duly sworn,
testified as follows:

BY MR. MANN:

Q. You are manager in Canada of the Northern Insurance

Company and its associated companies? A. I am.

Q. Five companies? A. Yes.

Q. You were on the committee representing 88 companies of the All-Canada Insurance Federation? A. Yes.

Q. Which authorized a subcommittee to collaborate with counsel in connection with the carrying out of the investigation before this Commission? A. That is right.

Q. You were also on the subcommittee consisting of representatives of fifteen companies. You were one of the members of that subcommittee. You are ex-president of the Canadian Underwriters Association also? A. Yes.

Q. You are on the council of that association? A. Yes.

Q. You are ex-president of the Canadian Casualty Underwriters Association? A. Yes.

Q. You are on the council of the All-Canada Insurance Federation? A. Yes.

Q. And on the dominion board of insurance underwriters? A. Yes.

Q. You are also chairman, are you not, of the government advisory committee in respect of war damage? A. Yes.

Q. Now, Mr. Hurry, have you a copy of the brief of the stock companies before you? A. I have them both here.

Q. The first and the second one as well? A. I have them both.

Q. Are you the author of the graph which is schedule "H"? A. That is the last in the book.

Q. That is the last document in the first brief of February 3? A. Yes. I made that sketch.

Q. Will you be kind enough to explain to the Commission the meaning of that graph? A. It tells a great many things which it might take me a long time to explain.

Q. Tell us shortly what it is. A. The top line goes right back to 1870 when the dominion government began to keep records of the operations of the companies -- what was the average rate charged for policies issued during that particular year.

Q. Per \$100? A. Yes, per \$100 of insurance. A great deal of business is now written for three years, more than half of it, I should say, so that the figures would include the rates for one year and three years. The top line does not reflect the cost per \$100 for one year. That is a mistake that is fallen into in one of the other briefs where it is stated to be so. As a matter of fact it is not so.

Q. The first line represents cash in? A. Cash in, in that year, yes. For the year 1942 the rate of insurance for policies issued is 66 cents but that 66 cents is not the cost of \$100 of insurance for one year. Mr. Finlayson, realizing that possibly somebody might be misled in this, in his 1942 book warns against that assumption. You will find on page 10, in Roman numerals, in 1942 report of the Superintendent of Insurance, that he shows that the rate of premium charged by reason of risks taken is 66 cents; but immediately he states the premiums charged as shown above cover policies for two and three years as well as one year. So that the average rate is not to be regarded as representing the average cost of insurance for one year. The comment on this point will be found on page 76, Roman numerals.

Q. You are referring to the 66 cents, the amount mentioned? A. In one of those briefs.

Q. Take the factory mutual brief on page 13 in the third paragraph. That is the 66 cents referred to? A. Yes.

Q. The statement made in Mr. Gray's brief? A. Mr. Finlayson broke that figure down and as a matter of comparison he went back and took a test year. He spotted a particular year twenty years before and showed that in 1922 the cost of insurance for one year of \$100 of insurance charged by small companies came to 92 cents, and then you will find I have a dotted line there because I have no intervening figures. The figures were made up for 1939, 1940, 1941 and 1942, and they show that in 1939 the price was 49 cents, in 1940 it was 45 cents, in 1941 it was 44 cents, and then it takes a little kick upwards and is 46 cents in 1942. If you care to extend that, it will be 46 in 1943, and I have good reason to estimate that it will probably be around 43 cents or less in 1944. But Mr. Finlayson has not got down to that figure yet. However, there is one particular thing that this graph shows to me, and I am always interested in figures. Statistics are apt to be very misleading unless you understand the trend and the influences which affect them. Look for example at the year 1921 and you will find that while our rate is coming down from 1905 in a steady progression, there is a kick upwards there. That shows just how statistics sometimes lie, because the rates were coming down all the time and in 1921 after the last war there was a big development in real estate. Soldiers were coming back and buying farms and these farms were insured and there was a tremendous amount of 3-year business in that particular year. And that always throws up the average rate. Three years later that is reflected again and the thing gradually smooths itself out and there is a continuous process downwards. As Mr. Ham explained, in 1941 a large volume of business was written -- in 1941 and

1942. The companies then started to write mercantile and manufacturing business in great volume for three years, which was previously written for one year, so that the premium of \$1 which appeared in 1940 was perhaps put in at \$2.50 in 1941 and that threw the premiums up. That is why you get that kick upwards, and that apparent increase in rates, when it is correct statistically, is wrong in substance, because the actual rate is coming down all the time. In B there is a slight flare-up in 1941. While the rate went up sharply on the group of statistics in 1941, it came down actually in the true figure in Mr. Finlayson's analysis, but there was a slight kick up again because of such a large volume of business having come in in 1941. That is tied up for the next three years, the cream of business in the one-year portfolio having been thrown into the three-year portfolio and not appearing the next year, so that the average rate of that one year's business rose a little. In actual fact, however, there is no disturbance in this continual progression. If you compare that with the losses it shows that all insurance is essentially mutual, because the rates have come down as the losses have come down. I do not think you need to worry about the big peaks because they are conflagrations. It is the general trend that I am concerned with.

The companies got together at a time when there were a great many going bankrupt in 1880 or thereabouts, because there was such competition for business and it was not sound. The companies got together, therefore, and established proper rates for insurance. At that time there were only thirty companies licensed in Canada for insurance. There were local provincial licensed companies and some mutuals which are a hundred years old. But the companies licensed by the dominion

and which are subject to these statistics got together and formed an association to try to improve conditions. They brought in gradually, from that time onwards, a system of schedule rating.

It has been explained to you what schedule rating means. You take a preferred risk, with every precaution taken allowing for any little defects or deviations from what you might regard as safety, so far as individual risks are concerned, and a little charge is put on the risk. You will see the extraordinary effect of that up to 1904 when the average rate was brought up. But there was a campaign of education going on at that time showing the people what could be done by putting in a fire door here, taking out that particular machine there, and so on, which was dangerous. Attention to these things would tend to bring the rates down. I am not pleading for the Canadian Underwriters Association, but they did that work.

Q. The year 1883 saw the organization of the Canadian Fire Underwriters Association. A. Yes. They brought the rate down. This campaign of education had such an effect by improving risks continually that it reduced the cost of fires.

You will see the cost of fires in the lower lines of the graph. At the same time, by improving these risks and cutting out the charges for extra hazards, they brought the rate continuously down, and that process has been going on. So that mutuality might be claimed by all companies, stock as well as mutual. The rates are kept very closely in line with the costs of losses.

The line marked C on the right-hand side is the only line I have been able to bring backwards. I took the

published loss ratio, the ratio of losses to premiums collected, and that is shown by the dominion figures right back, and I multiplied that loss ratio into the price of insurance, the money collected in the top line, in order to get what was the actual cost of loss per hundred on insurance -- not on our books but \$100 per insurance written that year. It might be for one year or three years. I was not satisfied with that picture, however, because it did not give the true figure I was looking for, and I took the bottom line, which is the figure published in Mr. Finlayson's report and those of his predecessors back to 1870. That is the figure showing the actual loss in cents per \$100 of insurance on the books of the company. If I write \$100,000,000 of insurance this year I still have in my books the business written the year before and the previous year for three years. This line shows the cost of losses per hundred of insurance and liability on the books of the company. That cannot be compared with the top line, which does not show the price of \$100 for one year. The price of \$100 for one year is shown in the line interpolated called B.

What I call attention to in this chart is the fact that B and D, which are two essential lines, are converging to show that there is less and less left for the company to operate business and make a profit. I don't want to make a speech, but --

MR. MANN: If the Commission understands it, it is very interesting.

THE CHAIRMAN: I hope I shall when I read the deposition.

MR. MANN: It is useful for certain purposes.

THE WITNESS: I am always interested in figures. There

is a figure of 92 cents for 1922. That is the cost we were charging that year for \$100 of insurance for one year. About that time, as you will no doubt remember, we had the Haileybury conflagration. Losses were costing about 45 cents or 50 cents -- 50 cents, if you like. That left a margin for the companies between 92 cents and 50 cents, or 42 cents, representing what they had to run their business on and pay all taxes, commissions and everything else, and make a profit if they could. That was a margin of 42 cents, and they are only getting 44 cents now altogether to pay losses and everything else, so that we are running the business pretty closely these days. It may appear that the ratio of premiums to our actual cost of operation is high, and I think it is a pity that it is, but that is inevitable because we are running more business under higher pressure and we have only 44 cents with which to pay losses. But we have effected economies and our work is so efficient that we are able to do that.

To my mind, what this schedule really shows is the essentially mutual nature of insurance, even under stock company management.

BY MR. ELLIOTT:

Q. Do different sorts of risk bear different rates of premium per hundred? A. Yes.

Q. In your opinion, is the shift in the proportion of different sorts of risk so small as not substantially to affect the correctness of your line? A. There is no great shift. The business of all companies is given here, even factory mutuals.

BY MR. MANN:

Q. Every type of risk? A. Yes. It covers the whole

risk of the company.

BY MR. ELLIOTT:

Q. In your opinion the shift in proportion to different types of risks is not important? A. No, because it is all there.

BY MR. VAUGHAN:

Q. Is that entirely correct? Take from 1900 on. There was great development in the fire-proofing of buildings, and that was about the time when sprinklers came into use fairly extensively? A. It commenced about that time.

Q. Is not this drop due to a large extent to the fact that there is a different class of risks? A. Yes.

Q. Buildings are less susceptible to fire. They are of concrete construction and the use of sprinklers has been adopted? A. Yes. There was a great improvement in construction and supervision as well and we gave advice.

BY MR. ARNASON:

Q. I was wondering whether you had attempted to construct a similar graph showing the trend in rates for rural insurance? A. Of course, this represents the rates for all kinds of business. I suppose something of that sort could be done, but it would not be very accurate. It might be only pictorial, because the Superintendent of Insurance produces a classification of risks, showing the cost of dwelling houses, so much, the cost of farm premiums, so much, together with other classes of business according to occupancy, location and so on, and he shows sprinkler risks separately. I suppose one could take the experience in all these things and make a separate graph.

Q. Is it your opinion that the construction of such a graph would show a trend that would correspond closely to this

chart? A. I think so, yes, because the business generally has been improved by education, which is the main consideration. But not only has there been a campaign in education; there has also been greater precaution against fires. If you will look at the losses, you will find that the loss curve reflects the view expressed by one of the fire mutual witnesses. Your losses in time of prosperity are low and in time of depression they are high. By tracing the bottom line, you can see what happened in Canada throughout the depression period when losses went upwards. You will find that what you thought was prosperity was false prosperity. What was the time of the stock exchange boom -- it was from 1923 to 1928, was it not?

MR. MANN: Up to the middle of 1929.

THE WITNESS: Well, you will find that from 1923 to 1927 the losses took a big slide downwards because there was plenty of money and goods were moving freely, and when goods move they do not burn.

THE CHAIRMAN: When did sprinkler protection first become important?

THE WITNESS: About 1900. In the 80's some of the big cotton mills were using sprinklers, but it was only around 1890 that there was anything of importance. I would say about 1900.

BY MR. VAUGHAN:

Q. Take any risk now and compare it to a similar risk in 1900. Take a factory that has a sprinkler and is of brick construction. What would the rate be to-day and what would it be in 1900? A. Experience has shown that these risks have greatly decreased in cost to the companies from the

standpoint of losses, and naturally the rates have fallen down. What the rate would be I could not say.

Q. You mean, taking a similar risk? A. Yes.

Q. Whether a factory or a house or any other kind of business, the rate would be less to-day than at that time?

A. Mr. Finlayson has shown that the average price of insurance in 1922 was 22 cents and in 1944 it is 46.

Q. That average would not determine the trend of rate in a similar risk because it is over-weighted by better construction. A. You take dwellings in towns like Montreal and Toronto and you will find that the rates have fallen substantially in the last twenty years. The same dwelling is paying much less than it did, and the same is true of rural dwellings. In the west rural dwellings are paying half of what they did twenty years ago.

BY MR. MANN:

Q. I want to ask you one or two questions relative to the claim of the mutuals and reciprocals that there has been discrimination under the Special War Revenue Act as against them and in favour of the stock companies by virtue of the provisions of that act, providing in regard to stock companies a 2 per cent premium tax as compared to a 3 per cent premium tax. I am omitting for the moment reciprocals and factory mutuals because they are 4 per cent. I am dealing with the 2 per cent and 3 per cent tax. Can you show anything in that regard which would indicate, from the illustrations you have made, that there has been any discrimination? A. The special war revenue tax was an emergency measure during the last war having for its purpose the raising of revenue, and like many of these emergency measures it has stuck. But it

was put on with the practical effect of a minimum tax on profits. That is to say, the company had to pay 1 per cent on premiums whether it made a profit or not, and there was no discussion as to what constituted profit. A company which was subject to income tax paid either the income tax or this 1 per cent, whichever was the greater; that is to say, if their income tax amounted to more than 1 per cent of premiums they paid that, but the 1 per cent was set off against the income tax. Some other counsel pointed that out yesterday but did not follow the matter through.

Q. That is prior to 1941? A. Yes. I am talking about the origin of it. The provinces charged 2 per cent purely for revenue and there was no question of profit, and the government in 1941 enacted some sort of arrangement with the provincial governments.

Q. That was 1942? A. Yes. I believe it was in 1942 that they made an arrangement with the provinces to do all the collecting on premiums and they compensated the provinces. They took the whole thing together and it now amounts to 3 per cent, but they do not allow any longer the 1 per cent to be looked upon as minimum income tax. That is to say, a company paying income tax had to pay that tax on top of that; but in consideration of the fact that they had taken away the concession or privilege -- that would be the arithmetical effect of it, I presume; they valued that concession at 1 per cent -- the stock companies then paying income tax paid 2 per cent plus income tax; and when the rate of income tax and excess profits tax is 40 per cent, if a company makes a profit of $2\frac{1}{2}$ per cent, 40 per cent of that is 1 per cent. So that it is paying that tax in another way because of the fact that it is only allowed to set off its special war revenue tax against

income tax.

THE CHAIRMAN: Then it is compensatory in a sense?

THE WITNESS: Yes. In fact, the companies are in no different position than before, by reason of the fact that the concession to the stock companies was withdrawn.

THE CHAIRMAN: But if they were exposed to income tax they would be in a different position.

THE WITNESS: They now pay income tax in addition to the 2 per cent.

THE CHAIRMAN: But I am saying that if the mutuals were exposed to income tax --

THE WITNESS: Then there would be no reason for the differentiation at all.

MR. MANN: I asked the question for the reason that there was some reflection on our conclusions with respect to the imposition of 2 per cent and 3 per cent on premiums. Even provided that there is income tax in respect of all companies, if a very small underwriting profit of $2\frac{1}{2}$ per cent is enjoyed by stock companies and they are paying 40 per cent income tax, 40 per cent of $2\frac{1}{2}$ is 1 per cent, so that they are paying 2 per cent, and they pay 1 per cent when they only have an underwriting profit of $2\frac{1}{2}$ per cent. Therefore they are paying 3 per cent, exactly the same as the mutual companies are paying 3 per cent.

THE WITNESS: It is a compensation.

MR. MANN: That is correct?

THE WITNESS: Yes.

BY MR. VAUGHAN:

Q. You say, from that, that they are on the same basis now? A. Yes; that is what I feel.

Q. Why do you suggest a higher tax for mutuals if they are on the same basis? A. Immediately the mutuals become subject to income tax they will be on a similar basis.

MR. MANN: And the difference between the 2 per cent and 3 per cent premium tax should be removed, or they should be made even. That is what we say in our brief.

THE CHAIRMAN: If that is right, it ties in with the special war revenue tax.

MR. MANN: It ties it in when you add the figures together, **if** you take any compilation of taxes and put municipal tax, business tax and special war revenue tax into a general combination of taxes, so far as quantum is concerned. If you pay income tax and are on the same basis and plane as we are in respect of your profits, there is no reason why there should be any discrepancy as between you and us of 2 per cent or 1 per cent in the premium tax under the Special War Revenue Act. That is what we say, and with the greatest respect I think that is logic that can hardly be attacked.

MR. ELLIOTT: I presume you take that position on the assumption that the premium tax levied equally over all companies would be paid by the mutual companies before deduction of returns to members of the company.

MR. MANN: Yes, as it is before any dividends can be paid in stock companies. The position is the same.

BY MR. MANN:

Q. Now, Mr. Hurry, we have been discussing the mutuals but we have still left the reciprocals and the New England factory mutuals, the provision in respect of which is 4 per cent under the Special War Revenue Act. Have you anything to say with respect to the 4 per cent being a discrepancy or

discrimination as against these two classes of companies?

A. I think, Mr. Mann, that probably Mr. Gray answered that question yesterday afternoon when he read into the record a correction of our Exhibit "C" in the second part of our brief and showed the premiums for the factory mutuals, which he said were two to three times as much as the premiums shown in our Exhibit "C". As a matter of fact, they were not very much over two times. The premiums shown for the purpose of assessing the 4 per cent tax were \$1,112,201 and the taxes shown are approximately 4 per cent of that. But he gave us yesterday some new premiums which amounted in all to \$2,263,217, and if you apply the amount of tax paid to the \$2,263,217 you will find the rate of tax actually paid was less than 2 per cent. That is the answer. There must have been some reason why this 4 per cent was charged and that is what I have been trying all week to figure out. Mr. Gray gave those figures to show what the actual net premiums were and apparently they differed from the premiums reported for the purpose of the 4 per cent tax, because those are figures taken from the Superintendent's report for 1943. I asked Mr. Gray where the figures came from. I wanted to know whether they came from the government's report and he said no. Those are the figures he read into the record yesterday of net premiums for factory mutuals in 1943, and if you apply the actual tax paid to those premiums it works out at 1.96 per cent paid on the premiums.

Q. With regard to interest on investments or investment income, it is claimed not to be paid by the British companies. First of all I want to ask you this question. Where usually are the securities to protect unearned premium reserve physically kept in the case of the stock companies? I am

not referring to the Canadian stock companies. Manifestly they are kept in Canada with the Receiver General. I am referring to the British companies. A. I do not know.

Q. Well, take your own company. A. I know that we are required to keep a certain statutory reserve, perhaps a little more, for the protection of policy holders, and that means that a proportion of the premium which is unearned on policies has to be lodged with the government. When you speak of reserves you mean that statutory reserve?

Q. I was rather directing my question, as a preliminary question, as to where in fact the documents representing these securities, in other words the scrip, are physically kept as a rule. A. I am glad you checked me. I am too verbose, but the requirement is to put that money up. What happens is this. If I have to put up more money by reason of the fact that I have bigger liabilities in Canada and advise head office, they take the scrip out of the vaults and take them to the Bank of Montreal in London, and the stuff is held there on behalf of Canada.

Q. Physically, these bonds, be they bearer registered, or be they anything else, do not enter Canada at all?

A. I am speaking of my own company.

Q. I am only speaking of your own company, the Northern and allied British companies. Do you know? A. Speaking of the usual practice?

Q. Yes. What would be the usual practice of British companies? A. You are speaking of my own company and allied companies. We had a company that was doing life insurance here, and they had a lot of securities in Canada. I was referring to the Northern.

Q. With regard to the American companies, as a matter

of fact, are not those securities held, to the order of the Receiver General of Canada, in the Bank of Montreal, New York?

A. I don't know.

Q. Let us proceed with the expression of your views in reference to the charge that the investment income of British and foreign companies is not taxed. Will you please give to the Commission the information which I anticipate you will be able to give.

THE CHAIRMAN: I did not get the question.

MR. MANN: The charge has been made that, in respect of investment income of British and foreign companies, it has not been taxed.

THE WITNESS: British companies are doing world-wide business, operating in every part of the world and investments apply to their own world-wide business. The only investments to which Mr. Mann could have reference would be the reserve put up for the protection of policy holders, and that is very diversified. It is a diversified portfolio which is the best protection possible, and that is lodged in London, and interest actually earned on that portfolio would be ascertainable. The Canadian stock companies are not quarrelling with us on that subject. We are representing Canadian stock companies here and they are not quarrelling with us. I venture to think that if we were put on exactly the same basis as the Canadian companies we would not be any worse off. The Canadian company is a Canadian corporation. It completes the whole of its operations in Canada and produces a balance sheet, and in that balance sheet they have their final operating figures. They are allowed the whole cost of head office organization, general manager, board of

directors and all those things, and they are also allowed the complete operations with regard to re-insurance. As far as I am concerned, I do not bring my figures down to the basis on which I would submit them to our directors before I am taxed. I am only allowed to deduct from my premiums the operations here, and re-insurance if it is effected in Canada. I am not allowed to deduct all re-insurance, as Canadian companies are, because they bring them down to their final results, and after my company is taxed I still have to pay the costs of a great many things. I have to contribute something to the cost of general management and the board of directors in London. I think that if you take the interest, at whatever rate might be earned, on this diversified portfolio of securities which is set back for credit of the dominion government, and put that on one side of the scale, and put all these other things on the other side of the scale, allowing me to bring my results to the board of directors on the basis of the final result of operations in Canada, possibly I might gain in the shuffle. I have not discussed this with any of my confreres and I am not speaking on behalf of the British companies. I am expressing my own personal opinion and it is purely a hazard of an estimate as to what might be the result to my own company.

Q. Yours being a British company? A. Yes.

Q. With respect to what you have said about these expenses, re-insurance and so forth, how do they relate to a foreign mutual company? I am referring to the amount of cash paid in Canada in losses, expenses and so forth? A. What you have in mind is, what is the result of operations of a reciprocal or factory mutual?

Q. Yes, exactly that. What in your opinion would be the fair and equitable modus operandi as among all companies operating the insurance business in Canada? A. I have listened to a great deal of discussion in regard to the details of the thing and I have in my own mind one fundamental principle. There are no Canadian reciprocals in Canada, no Canadian factory mutuals, and there is nothing wherewith to compare operations with the United States companies. Canada is a separate country from the United States, and what Canada is concerned with, when a foreign corporation or a British corporation comes into the country, is the question -- how much premium do they collect from the Canadian people? How much would it put them back for cancellations and terminations and how much do they pay in expenses in Canada? How much do they pay for actual losses which burned in Canada? If you come down to the fundamental basis you will find that either they made a profit in Canada, a profit insuring to the benefit of policy holders in the United States, or they made a loss in Canada. If they made a profit in Canada that is really a profit taken out of operations in Canada, and I don't care where the profit goes -- it goes to the policy holders in the United States. The bookkeeping entries with regard to American losses in Canada, for purposes of accounting, do not interest me. I am not interested from that point of view.

THE CHAIRMAN: Would there not be a considerable difference in cost?

THE WITNESS: There might be one way or the other.

THE CHAIRMAN: I am referring to these foreign companies that do business in the United States and Canada.

THE WITNESS: A difference in cost in operating in Canada?

THE CHAIRMAN: Yes.

THE WITNESS: These costs would be ascertainable, and after all that is what the Superintendent of Insurance is trying to ascertain. Let me mention my own company by way of analogy. My company made a substantial loss in operation in the United States; I made a small profit. But I could not ask my colleague in the United States to ship me a proportion of his losses that I might put them in the statement of my Canadian company.

Now, I notice that Mr. Ham showed a figure yesterday. He did not follow it through, but it struck me in this way. He showed that the losses which were charged to Canada by these bookkeeping entries, by this averaging up of all losses, were very substantially in excess of the actual losses incurred in Canada. If there were to be a basis found for taxing reciprocals and factory mutuals, it would look to me a question of simple fundamental principles: what was the result of their operations in Canada?

Q. Mr. Ham's figures showed that the actual losses in Canada were \$1,194,026, as compared with an amount charged against Canada of \$1,558,586, a difference of \$384,560. Those are the figures to which you have just referred?

A. Whatever the figures may be.

Q. Those are the figures you had in mind when you referred to Mr. Ham? A. Yes, those are the figures to which I referred.

Q. The method or the working out of the calculation of actual business performed in Canada, as described by you in the last few minutes, in your opinion as an insurance man would be the fair method upon which to base taxation of income and profits; is that correct? A. I think so; but the actual method--

MR. PARKER: Would you mind restating that question?

BY MR. MANN:

Q. The method or the working out of the calculation of actual business performed in Canada, as described by you in the last few minutes, in your opinion as an insurance man would be the fair method upon which to base taxation of income and profits, that is correct? A. That is correct. The actual detailed method of working out these figures might very well be left to the finance department.

Q. I am merely talking about the calculation of business performed in Canada and profits made in Canada, as matters standing entirely by themselves. The details of how they are computed, and the calculation, is something for administrative effort, is it not? I was merely talking about the principle. A. To my mind the principle would be sound.

Q. It seems sound to me, but I am a tyro in this thing.

BY THE CHAIRMAN:

Q. Practically, would it be difficult? A. There was a statement lodged by Mr. Gray as an amendment to his brief, which is Exhibit 1, I think. He shows the amount of money, made public by the superintendent of insurance and reported in his report to the government. There is the words "underwriting gain" which are struck out, and there is shown a surplus of \$106,977. Then the gain is submitted, worked out in a different way, to show that there was a loss. But apparently Mr. Finlayson, in working out the results of that company in Canada, followed the same basis as he did with other companies. He said, "How much money have you collected in Canada? How much have you paid back in determinations and cancellations? How much have you had in losses and expenses?" Then he shows a surplus of \$107,000. Whether that is the figure on which he should be taxed is a matter that could be left to the finance department.

BY MR. MANN:

Q. That was Exhibit 1 in Mr. Gray's brief, and had reference to the manufacturers' mutuals? A. That is right.

Q. That is the one about which we had the discussion as to the words "underwriting gain" amounting to \$106,977.58, which had been inked out, with the exception of the figures? A. Yes.

Q. Does that exhibit of Mr. Gray's confirm the theory that you propound as to the proper method which you believe taxation ought to be imposed upon, under the Income War Tax Act and Excess Profits Tax Act, in respect to the operation of Canadian business in Canada?

A. That would seem to be so.

MR. MANN: I think that is all I have.

BY MR. VAUGHAN:

Q. That figure of \$385,000 which you mentioned a short time ago was based upon gross premiums was it not, rather than upon the net premiums of the mutual companies? That was in a period of four years, was it not? A. Yes. That was a figure that Mr. Ham produced, and I think it is in these briefs. I do not recall how it was arrived at, but my question is whether that is taking the gross premiums of the mutuals or their net premiums? A. I think, possibly as Mr. Ham compiled those figures, you might ask him that. I think he takes from the government report the actual amount paid in losses, the physical dollars; how much was paid in losses, and how much was charged into the Canadian account by book-keeping entries of the same companies, and he shows a discrepancy of so much, because they have averaged their losses between the United States and Canada, and the losses in Canada were less in proportion. But that does not refer, in these figures, to premium at all; just to how much was paid in losses.

MR. MANN: I just want to draw attention to the exhibit. The net premiums written were \$4,893,155 for the years 1936 to 1943 inclusive. The losses said to be incurred were \$1,194,026, whereas in fact the losses incurred in Canada or rather the losses charged against Canada were the fictitious -- and I say that with respect -- figure of \$1,578,586, which

represents \$384,560 charged in losses against Canada which in fact did not occur.

THE CHAIRMAN: You apply the word "fictitious" to it because part of that is incurred in the United States. Is that the idea?

MR. MANN: Would that be disrespectful to the United States? If so I would not suggest the word "fictitious". Anything is fictitious which is worked into a picture and which does not belong there.

MR. ARNASON: Have you any information, Mr. Mann, to indicate that in some other years a different policy might have been followed?

MR. MANN: Personally I have not. I have no figures to indicate that, but those figures were spread over the period from 1936 to 1943 inclusive. That was a plus figure in those seven years. I cannot say as to the other point. I have not any doubt that in some years it would work out otherwise. But then I would suggest that the government has to stand or fall on their minus figures, because there would not be any profits to tax. Certainly in those years there were profits, but in relation to taxes each year must take care of itself, must it not?

BY MR. PARKER:

Q. Mr. Hurry, just a moment ago you made a statement which I did not quite follow; that something, whatever it was, could be left, you thought, to the finance department to settle. What was that, which you thought should be very well left to the department? A. The actual computation.

Q. Of what? A. Of their premiums and expenses and losses in Canada.

Q. I just wanted that clear. You are the representative, the manager of the Northern company? A. Yes, sir.

1. The first part of the document is a list of names and dates, arranged in two columns. The names are written in a cursive script, and the dates are in a more formal, printed style. The list appears to be a record of some kind, possibly a roster or a list of events.

2. The second part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

3. The third part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

4. The fourth part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

5. The fifth part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

6. The sixth part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

7. The seventh part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

8. The eighth part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

9. The ninth part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

10. The tenth part of the document is a series of paragraphs, each beginning with a date. The dates are written in a cursive script, and the paragraphs are written in a more formal, printed style. The paragraphs appear to be a record of some kind, possibly a journal or a series of letters.

Q. That is a British company? A. Yes, sir.

Q. It carries on business in the United Kingdom?

A. Yes; every part of the world.

Q. We will just take one thing at a time. It carries on business in the United Kingdom? A. Yes, sir.

Q. It carries on business in the United States?

A. Yes, sir.

Q. And it carries on business in Canada? A. Yes, sir.

Q. Under your supervision? A. The last one only; in Canada.

Q. What is that? A. You say it carries on business in the United States and carries on business in Canada. In Canada only it is under my supervision.

Q. That is what I said; it is under your supervision in Canada, and that is correct? A. Yes, sir.

Q. Do they carry on business in other parts of the world, or is their business restricted to those three countries? A. They carry on business in every part of the world.

Q. Do they keep separate accounts for the Canadian business or do they not? A. In the head office my accounts--

Q. Just answer my question, if you please; then we will go on. Do they keep or are there kept separate accounts for the Canadian business, separate and distinct from business in other parts of the world? It would seem to me you could say either they did or they did not? A. It depends on what you mean by "they".

Q. I mean the company. Had you any doubt as to whom I meant? A. Not a bit. As far as I am concerned --

Q. Let you and I have an understanding, Mr. Hurry. Just listen to the questions, if you will, and answer them, and reserve your lectures for some other occasion. Would you mind?

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MR. MANN: I cannot see that that is quite warranted coming from my learned friend as counsel for the commission. I do not think that type of observation to this type of witness is warranted by counsel.

MR. PARKER: Then I withdraw and apologize.

MR. MANN: This is quite an independent witness.

MR. PARKER: I realize that.

MR. MANN: Then treat him as such.

BY MR. PARKER:

Q. What was your answer to the question?

A. I, as manager for Canada, make up my accounts on the basis of the government requirements, and submit them to the superintendent of insurance. He examines them, and that is the account in Canada, for the purposes of taxation and for the purposes of government returns. I then make up an account, after taking off certain expenses and outlays and pros and cons which the government in Canada does not recognize in my accounts in Canada, and I make up a complete, final account for my head office, which I send over to them for the purpose of being merged with the rest of the business in the world. Is that the answer you wish?

Q. If you think it is; you are the man making the answer.

A. I try to make myself clear.

Q. Very good. Are the accounts kept in such a manner that there could be taken off readily the amount of premiums on Canadian business, that is business written in Canada?

A. Yes.

Q. That can be done? A. Oh, yes.

Q. And the costs; and by that I mean the general costs, office operation, agents' fees and what not. Could they be taken off separately? A. Yes.

Q. For the business written in Canada? A. Yes.

Q. And could the amount you paid in losses be readily taken off? A. They are shown very exactly.

Q. Is it possible to pick out the amount set aside for reserves out of the moneys received from Canadian business in premiums? A. A portion of those premiums is set aside by law.

Q. Is that what I asked you? A. I am just trying to be clear on it, to make sure I give you the proper answer. It is possible. I collect a premium, and the government says--

Q. This is what I asked you; if it was possible to pick out and compile the amount set aside for reserves out of premiums received on Canadian business? A. It is compiled in that fashion, in fact.

Q. And it is true that substantial sums are placed into reserve out of premiums received on Canadian business; is that true? A. That is true.

Q. And that money which is put in reserve is invested, I take it? A. Yes.

Q. Speaking as a general rule? A. Yes.

Q. And yields an income? A. That is right.

Q. Could there be taken off the amount of investment income from your reserves, arising from premiums received on Canadian business? A. That could be done, but not by me. I am not in possession of the scrips.

Q. But the amounts of that can be had at head office? A. Yes. That could be shown.

Q. But you have not the figures? A. No, I have not.

Q. With that income, whatever it might be, arising from that Canadian business, does the company pay any income tax in Canada? A. No.

Q. Does the company pay any income tax in Canada?

A. Oh, yes.

Q. On what does it pay income tax in Canada? How is the amount arrived at? A. On the surplus in its underwriting account.

Q. And how is the underwriting gain -- what items compose the amount on which it pays income tax in Canada?

A. The amount is shown in detail in the government returns.

Q. Would you tell me? I have not the government returns here. Just tell me, please, in as few words as you can, on what items, what amounts the company pays income tax. You are referring now to the blue book? A. Yes.

Q. For what year? A. For 1942.

Q. What page? A. Page 541.

Q. Now can you tell me? A. It shows there losses incurred, so much.

Q. That is losses incurred in Canada? A. Yes.

Q. Meaning the amount paid for losses in Canada?

A. Or the losses which are outstanding and unpaid; we have to set that up.

BY THE CHAIRMAN:

Q. That is for your company? A. Yes.

Q. You are speaking of your company now? A. Yes, I am speaking of my own company now. That is the reference.

BY MR. PARKER: Yes, let us limit our discussion to that. A. There are the losses incurred, and then are shown all expenses incurred, including so much for the cost of adjusting losses.

Q. Those are the expenses incurred in connection with the Canadian business? A. The amount actually spent in Canada.

Q. As such, or pro rata? A. They are all the actual expenses. Then there is a reserve of unearned premiums at the end of the year, that is computed by ascertaining, according to a formula, the amount of my unearned premiums. If I write a policy this year, for one year, it is deemed that all those policies have been in existence for six months, at the end of the year, and I have to put half the premium up at Ottawa to make sure I cover up the rest of the contract. Then there is a special reserve for guaranteed bonds. That is a special thing, a small reserve arbitrarily arrived at, and the amount is quite small. Then there is profits and underwriting gain. The other side of the account shows first of all the reserve of premiums, unearned premiums carried forward from the previous year; then this little reserve for guaranteed bonds, then my net premiums written in Canada for the year, and the balance is struck, and I am shown to have an underwriting profit.

Q. And then on that amount the Canadian income tax is applied? A. That is right.

Q. And that is all the income tax they pay in Canada? A. That is right.

Q. Your particular company? A. Yes.

Q. And have I got this clear, that in so far as the company is in receipt of any investment income, it does not pay any income tax upon it. Is that right?

A. It does not. I do not invest money in Canada.

Q. I realize that. That is the theory or the basis, I assume, as to why you do not pay it in Canada; because all investments are taken on the basis of having been made at Head Office, where I suppose in fact they are actually made?

A. That is right.

Q. Perhaps this has not very much to do with us, but

does that apply in reference to the United States business, do you know? A. I can only talk for my own company.

Q. I mean whether investments with moneys earned in the United States are all made through the head office, the same as in connection with the Canadian business?

A. I do not know what they do with that, but they are taxed upon the same basis we are. They are corporations coming into Canada to do business.

BY THE CHAIRMAN:

Q. I suppose a wholly American-owned and operated company in Canada is treated on the same basis as yourself?

A. That is my understanding.

MR. PARKER: Unless they operate by means of a subsidiary.

THE CHAIRMAN: Oh, yes.

THE WITNESS: I should like to make sure that I did not give an answer without fully understanding what the chairman said. He speaks of a company operated by a United States company. He is speaking about a United States company operating a branch here?

BY THE CHAIRMAN:

Q. Comparable to your company operating from Great Britain? A. That is right. I think there is some confusion there about whether there might be a subsidiary; the word "subsidiary" was used, and I was afraid of that.

BY MR. PARKER:

Q. During this week you have on many occasions heard criticisms, or what I think were intended for criticisms of the way Mr. Finlayson sets up his reports? A. Yes.

Q. That they were either wrong or misleading; I am not just sure what was intended; at any rate they left an impression, as between the stock companies and the various types of mutuals, of some unfairness, or something

misleading. I do not know just what the criticism was.

You know what I am referring to? A. Yes, I think so.

Q. Do you agree with that criticism, or do you feel that Mr. Finlayson's reports are set up on a proper basis in order to show the proper relationship between the two groups, the two types of companies?

A. As I understand Mr. Finlayson's function, it is to ascertain what are the operations of a company in Canada, and it deals entirely with its business in Canada. He makes up his accounts on that basis.

Q. Do you think the criticism offered is well founded?

A. No, I do not think so.

Q. You do not think there is any foundation or justification for that criticism? A. No.

Q. And you have studied it with that in mind, and that is your considered view, is it? A. My considered view is that the business methods of all companies are put on the same basis. If one company has shown a result which is not its final result in Mr. Finlayson's return, I could claim the same thing as far as my own company is concerned, because I have to do a lot of things with the report of my company after I furnish my report to him.

BY THE CHAIRMAN:

Q. In other words, if you wanted to change Mr. Finlayson's opinion, you would have to compute the figures in the way he has done it in the blue book? A. That is right.

BY MR. PARKER:

Q. Just a word as to the Special War Revenue Act. Your company does pay a tax under that act, does it?

A. That is right.

Q. It pays one per cent? A. Three per cent now, of course. No, I am sorry; it is two per cent.

Q. That is right. It was one per cent before the provincial-dominion arrangement was made? A. Yes.

Q. And now it is two per cent? A. Yes.

Q. Will you tell me just exactly on what you pay two per cent, just as specifically as you can. Tell me how the amount on which two per cent is applied is calculated?

A. I take my gross premiums received. I deduct from that any premiums which I have passed to companies licensed to Canada for reinsurance, and they take care of that part of it. I also deduct returned premiums for cancellations, and then I arrive at my net premiums for the purpose of taxation.

Q. And it is on that figure that the two per cent is applied? A. On that figure the two per cent is applied.

Q. That is what you pay the tax on? A. Yes.

Q. That seems fair. Now let us take the type of company which I understand pays three per cent. That would be what; the reciprocals? A. No, the cash mutual companies.

Q. Will you tell me, just as simply as you can, how the amount is calculated on which the three per cent is applied? A. I can only presume.

Q. If you do not know I will not press you. If you do know, please tell us. A. I am under the impression--

Q. I would rather not have impressions. If you say you are not competent to answer that question, do not struggle with it. However, I do not wish to shut out impressions, if the commission cares to hear them. I want to get this just as concisely and just as clearly as I can, to see if the different types of companies are taxed on a comparable basis, or on a fair and equitable basis in respect to each other. You have given us very clearly how the amount is calculated as far as the stock companies are concerned. Can you give me in the same way what it is calculated upon in the case of the companies who pay the three per cent?

A. I am afraid I will have to refer you to Mr. Finlayson for that.

Q. You have perused his reports? A. Yes.

Q. Is it not shown in the reports? A. Yes.

Q. Do you understand the reports of Mr. Finlayson? Are they clear to you? A. Would you like to pick out a company?

Q. No, I am just talking about the general principle at the moment. You have studied the reports? You understand them? A. Yes.

Q. And you say this is shown in the reports, how that amount is arrived at on which the three per cent is applied? A. Yes. The reports do not indicate to me that it is applied on the same basis as my own company.

Q. That is where the dispute arises, as to whether it is or not. You tell me how the amount is calculated, and we will let the commission decide whether it is the same or on a comparable basis. Can you do that?

A. I cannot do that. I can read from this report.

Q. If it is merely reading it, the commission can do that as well as you can. If you cannot explain it, I will not bother you. Now let us come to the other group, the reciprocals and factory mutuals, who pay four per cent on something? A. Yes.

Q. And I put a similar question to you. Can you tell me how the amount is arrived at on which the four per cent is applied in that type of company? A. I cannot.

Q. But it is all set forth in the report? A. He does not show how the amount of premium is arrived at in his report.

Q. Either for the factory mutuals or the cash mutuals, either one? A. No.

Q. I thought you said in reference to the cash mutuals

that it did ? A. It shows the figure as premiums, but with regard to the other mutuals I would not be prepared to say that the figure shown in here is premiums, because apparently there is some divergence of opinion as to what is premium. Mr. Gray gave us some new figures.

Q. I quite realize there is a difference of opinion, and I am trying to keep away from opinion and get down to facts. A. I am not able to give you facts in regard to their premiums.

Q. You are not able to explain to me how the sum is calculated on which the four per cent is applied in the one case and the three per cent in the other? A. I am not.

Q. But you referred me to reports and say it should be there. Is that what you say? A. That is right.

Q. Then if it is there, why can you not tell me? If you have read the reports and cannot answer that question, I am sure I will not be able to. My instructions are, and my understanding from looking at the reports and the little I can gather from them, is that it is not there, that there is not sufficient data in that report to enable you or anybody else to answer my question. Do you agree with that? A. That is exactly so; that is what I have been trying to say.

Q. I am sorry I misunderstood you; I thought you said it was there. A. Certain premiums are shown here. How they are calculated, I do not know.

Q. I know the four per cent is applied to something there, but my inquiry is as to how that amount is calculated out of their gross intake? A. I replied some time ago; I said I do not know.

Q. You had something to say, as I understood you, in regard to the reason why this four per cent and three per cent

tax was imposed upon certain companies as compared with two per cent on the stock companies, that this had some relation to the amount of income tax each was paying or not paying; is that right? A. That is right.

Q. Is that a fair way to state it? At the present time your company and others in a similar position pay both taxes? A. We do.

Q. You pay the premium tax on the basis you have described, and you also pay the income tax? A. That is true.

Q. And now they do not get the credit on the amount of their income tax for the amount of the premium tax?

A. That is true.

Q. Whereas formerly they did get that credit? A. Yes.

Q. Have we got it straight now? A. Yes.

Q. And that change was made in 1942? A. Yes, and applied to 1941.

Q. And that arose, you say, in some way as the result of or out of the dominion-provincial agreements? A. That is so.

Q. Why do you say, as I understand you to say, that the higher rates of four per cent and three per cent as imposed upon these companies as compared to two per cent on the stock companies, is related to the fact that you pay income tax and they do not? What do you base that upon? A. Do you wish me to repeat the evidence I gave to Mr. Mann with respect to that? It is rather lengthy.

Q. You told him so much I could not follow you, but could you tell me, as briefly as you can, what leads you to make that statement, that the higher rate was imposed upon these companies because of the fact that the stock companies were paying income tax and they were not? That was a correct summation of your statement? A. Yes.

Q. I just want to test that. I am not saying it is not true, but I want to know upon what you base it. What is your authority? A. I went into this question a long time ago, in 1942, when the thing was raised, to find out what the effect was. That was the effect, arithmetically, that I have described to you. Upon inquiry I found that the reason for this --

Q. May I interrupt? What inquiry; from what source?

A. From the insurance department at Ottawa.

Q. That is Mr. Finlayson? A. Yes. I found --

Q. He told you, you mean? A. He or one of his representatives; I am not sure which. It was some time ago.

Q. I should like to know, because I might want to interview this particular representative. Could you be as definite as possible? You do not know whether it was Mr. Finlayson who told you this? A. I do not know, because I did not make the inquiry personally. I made it through one of my staff, and I was responsible for him.

Q. Is there any reason why you should not disclose to us the name of the member of your staff who made the inquiry? A. Not the slightest reason in the world. The chief accountant in my office is a Mr. James Young. He ascertained and reported to me that the premium tax of two per cent was imposed because there was a withdrawal of a concession -- if it was a concession -- enjoyed by the taxpaying companies. Prior to that the tax operated as a minimum income tax on profits. I paid one per cent or I paid tax on profits, whichever was the greater. They withdrew that concession, and I paid two per cent -- no, I did not pay one per cent, but I paid premium tax of two per cent, and I paid income tax on the full of my underwriting surplus.

Q. But I do not yet quite see anything in that to justify you in saying that because of that, they put the higher tax on the other two types of companies. Do you?

A. The other companies were in exactly the same position as they were before, and we were in exactly the same position as we were before. That was the effect, and that was the intention.

Q. And when the storm blew over, you were in exactly the same position? A. Exactly the same position as before.

Q. Is that all you wish to say on that? Is that all you wish to say as to why these two rates of taxes are different? A. That is all.

MR. MANN: Perhaps I may correct that. It was that plus the very clear and lucid statement he made before. That is his whole answer. I should like that clear.

THE CHAIRMAN: You are not putting your words into the mouth of Mr. Hurry, Mr. Mann? That is your observation?

MR. MANN: Yes, but I say I would like Mr. Parker to understand that these last words are not the whole answer.

MR. PARKER: It does not make any difference whether I understand it or not.

Q. What I want is to make sure that you, Mr. Hurry, have given all the authority that you had for making the statement that you did, as to the reason these rates were different. Have you told us all you want to say?

A. I have said here all I wish to say.

Q. Have you told us all you wanted to say as your authority? A. All I have said on the subject is all I can think of saying. I have nothing else, unless you have some question to ask.

Q. Then there is another thing I wish you would clarify for me. You worked out something, that 40 per cent of

two and a half per cent was equal to one per cent. I guess that is true mathematically, but I did not quite follow your argument or what you endeavoured to prove. Would you re-state that, please? A. If I make a profit of two and a half per cent on my premiums and I pay to the government 40 per cent of that profit, then I am paying to the government one per cent on my premiums. That is the implication.

Q. That is complete now, is it? A. Yes.

Q. Did you assist Mr. Ham and others in the preparation of the brief? A. Broadly.

Q. Just what do you mean by that? A. All I am concerned with in this matter is broad principles. The detail of the brief was put before council and the brief was then submitted to us.

Q. Did you discuss with those who were preparing the brief the specific recommendations that appear in the brief? A. Yes.

Q. I suppose after consideration of the situation, as you understand it? A. Yes.

Q. And realizing what this commission was charged with, you brought your mind to bear upon some specific recommendations which you thought would help and be fair? A. That is right.

Q. Then let us look at those for a moment. A. You are referring to page 11?

Q. Yes, page 11 of the main brief. These are the recommendations:

"We suggest the following modifications of the income and excess profits taxing measures as regards mutual and reciprocal insurers:

"(a) that all exemptions from taxation with respect to insurers in the other than life field be

eliminated."

That is perfectly clear. You understand reasonably well, I am sure, and perhaps entirely the method by which these so-called mutuals operate? A. I have heard a good deal about it here.

Q. And you are reasonably familiar with it, quite apart from that? A. Yes.

Q. In your opinion, from your general knowledge and such knowledge as you may have acquired during our discussions here, do you feel that these mutuals require any statutory exemption in order not to have to pay income tax; or do you think they just have no income, from the very nature of their operation? A. I think that they are liable to income tax under the statutes as they are at present.

Q. Perhaps I have put two questions to you, and you have given me an answer to both of them, but can you separate them? Assuming there were no exemptions now under section 4 of the Income Tax Act at all, do you think these companies as you understand them would be taxable? A. I do.

Q. And you still think they are taxable, notwithstanding the exemptions? A. Yes.

Q. In other words you do not think the exemptions, whatever they may be, are wide enough to exempt these particular types of company? A. That is my view.

Q. Then what is the point in wiping them out, if they do not exempt them anyway? What is the point in wiping out the exemptions if these companies are not exempt? That would not affect the companies, would it? A. That is a matter of argument and law, and I do not think I am competent to undertake that.

Q. Very good.

MR. MANN: I think you are right.

MR. PARKER: I think likely he is, but in any case we have his answer.

Q. Now let us come to the next recommendation:

"that the tax on income and profits in respect of unincorporated bodies such as reciprocal exchanges, and inter-insurers who act through an attorney in fact be assessed to income tax upon the respective members--"

On whom should the tax be imposed under that sentence, and on what amount of money? What is your recommendation there? A. Your reference is to the word "members" I take it?

Q. My reference is to that sentence, "the tax on income and profits in respect of unincorporated bodies. . . be assessed to income tax upon the respective members." Frankly I do not understand, and I wish you would tell me two things. Who is the person you want to pay the tax, and in respect of what sum of money? A. This body, whether it is incorporated or not.

Q. Which body? A. You are referring here to reciprocals.

Q. I am referring to whatever you are referring to. That is just what I am trying to find out. The evidence here all week was that in the reciprocals --

A. This is the reciprocals.

Q. And in that case there was no such thing as a body. Perhaps you do not agree with that; I do not know. Now, do you get my question clearly? A. Yes.

Q. Then who is the taxpayer and in respect to what amount of money do you suggest a tax be paid? A. This reciprocal is an association of people. They call it an exchange, we will say. An exchange is a place, but these people meet together some place. They keep accounts.

They are reciprocal; that is to say, each is for all, and all the rest of it. They have, then, some sort of a common interest, some sort of common pool out of which money is taken and into which money is put. The suggestion I made was that, getting down to fundamental principles and forgetting all the detail of method, the government should ascertain what profit that body or that agglomeration of people make in Canada. Suppose for a moment they insure a large number of risks in Canada.

Q. We do not have to suppose that; they do.

A. All right; they do insure a large number of risks in Canada. Suppose that this particular year they are fortunate, and have no fires in Canada at all, while they have a large number of fires in the United States. For the cost of those fires in the United States, of course, they will assess their Canadian policyholders, who will have to pay so much money. Those members of this nebulous body, whatever you call it --

Q. That is what I am trying to find out, what this body is.

BY THE CHAIRMAN:

Q. I suggest to you the expression "joint venture". A. All right, sir; thank you. The members of this joint venture are operating as a whole. In Canada the joint venture has made money; it has made a profit, by reason of the fact that it has paid no losses in Canada but has collected premiums in Canada. That is the situation I have in mind when I suggest that taxation upon the operations of this body in Canada should be applied to the figures in and out in Canada, just the same as they are with me. As I said before, I cannot ask my United States friends

to send me up some of their losses, although it all concerns the same pot, the same as theirs do. I cannot ask them to send me up some losses here, to average them up and put them through my books in order to ease the tax situation.

Q. Having gotten that, then, I want to ask you if you will tell me who is the taxpayer in the recommendation which you suggest; who should pay the tax? Is it the individual members, or is it the attorney in fact, or who is it? That is the question I want answered? A. There is a common pot with some money in it. That is the taxpayer.

Q. I did not really ask you about that. Is it the pot that is to pay the money? Is that the taxpayer? A. All expenses come out of that pot, and I guess the tax could come out of that, too.

Q. But taxes do not come out of a pot, unless somebody puts their hand in and takes the money out, in my experience. Will you please tell me, are you suggesting that the tax be imposed upon the attorney in fact? Is that the taxpayer you have in mind in this recommendation?

A. I am trying to enunciate a fundamental principle.

Q. Well, I am trying to get a simple question answered. Look at your recommendation:

"that the tax on income and profits in respect of unincorporated bodies such as reciprocal exchanges and inter-insurers who act through an attorney in fact be assessed to income tax upon the respective members--" I understand that somebody is to pay a tax. Are you suggesting that the individual members of this reciprocal should pay a tax on something? Is that what you mean; and if so, what do you mean by "something"? A. It ultimately would reach them, of course.

Q. I did not say that. I asked who is to pay it;

who is to make out the return; who is the man that Mr. Fraser Elliott or his Department is going to bill for a tax? Who is the taxpayer? A. They have a central representative who makes up those returns.

Q. Is that really an answer? A. I am perfectly satisfied to leave the details of that to the finance department.

Q. Well, I am not.

BY THE CHAIRMAN:

Q. Is there not a split personality? The attorney in fact acts for himself personally and he also acts in a quality for somebody else, an inchoate body, or something else. Is that the idea?

A. That is it.

BY MR. PARKER:

Q. Just one or two more questions. What we have said concerning the reciprocals, that is your recommendation in paragraph (b), does it apply to both the reciprocals and the factory mutuals? A. Yes.

Q. Who is the person to be assessed in the case of the factory mutuals; the company itself, or the members, the policyholders? A. That would seem to me obvious. The method of getting the collection is a matter for the collector.

Q. But this is a matter of your recommendation, which is different. We can all go home and tell the collector to do it himself, but this is what we have been requested to do, and we in turn are receiving a suggestion from you.

A. Are you still talking about paragraph (b)?

Q. Yes. There is no recommendation in the first part of that relating to the factory or cash mutuals at all?

A. That is right.

Q. Then let us go on to the second part:

"--and that the attorney in fact be assessed to income tax and excess profits tax in respect of the income and business profits of such organization remaining in his hands."

What is the organization to which you refer there? A. The joint-venture, I think, was the word which was kindly given to me.

Q. I am afraid you are only jumping from the frying pan into the fire. You cannot very well tax a joint venture. I never heard of a joint venture having an income tax imposed upon it, did you?

THE CHAIRMAN: I am afraid I talked you into that, Mr. Hurry.

THE WITNESS: This joint venture is in business.

BY MR. PARKER:

Q. But I am looking for the identity of the tax-payer, somebody I can send a bill to and sue, if he will not pay. Do you see my point? A. Yes.

Q. Who is it? A. Well, it may be the individual member in Canada. It may be the attorney in fact, who is holding back some funds which should accrue out of profits.

Q. Or it may be somebody else? A. I think that is all. You may collect from a joint venture.

Q. As a lawyer I have often sued people, but one of the first things I have to decide is whom I am going to sue; otherwise I am liable to get into trouble. I want you to tell me this. A tax had to be imposed upon somebody. Who is the taxpayer that I can insist shall pay me? If you cannot tell me, just say so? A. The taxpayer would be the individual member.

Q. For how much? Each individual member for the whole

amount, or only for his share? A. For his share of the amount.

Q. That is, it is a purely several liability, you suggest, not a joint liability; is that your claim?

A. Yes. You are getting me into legal questions now.

BY THE CHAIRMAN:

Q. As I got you into that I will perhaps suggest this, that the attorney in fact is the holder of the fund which we have termed the joint venture, and the fund is responsible for that tax-- I am only suggesting this to you, Mr. Hurry-- which is in the hands of an individual. It is the fund that pays the tax. Is that not right, Mr Hurry?

A. Yes.

MR. MASON: The attorney-in-fact does not hold funds; he holds certain funds, but not the funds referred to here.

THE CHAIRMAN: Perhaps he holds immediate title to the funds.

MR. MASON: No.

THE CHAIRMAN: Immediate title?

MR. MASON: No.

BY MR. PARKER:

Q. He holds capital funds, but not necessarily the funds on which the recommendation suggests that the tax be made.

THE CHAIRMAN: My attempt to assist Mr. Hurry has not helped very much.

BY MR. PARKER:

Q. As I understand the recommendation it is a sort of two to one affair; the first part is a tax on some specific fund, in the name of some specific person or body; and then we have a second part, and I want to ask some questions with respect to that. What makes up the taxable item which is referred to in the second part of the recommendation, and who is the taxpayer? Take a look at it.

MR. MANN: He had better read it right down to the last line, right down to the last line.

BY MR. PARKER:

Q. Beginning at the word "and" we find the words: "And that the attorney-in-fact be assessed to income tax and excess profits tax in respect of the income and business profits of such organization remaining in his hands."

I would call your attention to two or three words in that quotation. I refer to "income and business profits

of such organization remaining in his hands." That pre-supposes that there is an organization, I suppose. This group or association or, call it what you like - remaining in his hands when, or remaining after assuming what? What do you mean by "remaining in his hands"? A. That refers to undistributed profits.

Q. It refers, you say, to undistributed profits?

A. Yes.

Q. And the first part refers to distributed profits, does it? A. Yes.

Q. And the distributed profits are to be taxed in the hands of those to whom they are distributed. Is that your recommendation? A. Yes.

Q. The distributed profits are to be taxed in the hands of the person in whose hands they are? A. Yes.

Q. And in this case you suggest the attorney-in-fact? A. Yes; I accept that on the ground that you suggest that the common pot should be taken in.

Q. Oh, do not make your answer as a result of anything I have suggested.

MR. MANN: We cannot take action against the common pot.

BY MR. PARKER:

Q. I want your answer to be made on the basis of what was in mind when this paragraph was drafted.

A. Yes, I take it as meaning just what it said.

Q. Then, coming on to the next part, --

"That the recognition by parliament that reciprocals and mutuals enjoy an advantage over the stock companies appearing from the differentiations in the premium tax."

We discussed that before, did we not? A. Yes.

Q. That by reason of the fact that they pay more under the Special War Revenue Act --- A. Then we suggest that when they pay income tax that those differences be removed.

Q. Be allowed as a credit. A. That these differences between 2, 3 and 4 per cent be removed when those people pay income tax. That is the import of the thing, as I understand it.

Q. It would be the same thing if they make up their income tax, and then take a credit for the differential. A. There is no credit.

Q. But in computing the income tax, if they have computed it at 100, and then take a credit for the difference between the two and three and four respectively, that would equalize it, would it not? A. Yes.

Q. The net result would be the same. A. Yes.

BY MR. ARNASON:

Q. Then, in connection with clause (c) I take it that you agree that purely farm mutuals should be exempt, in any event. A. I recognize the fact that there is such a thing as a pure mutual.

Q. And you do not think any of those about which we have heard, with the exception of the farm mutuals, are pure.

MR. MANN: We do not think they are pure.

BY MR. PARKER:

Q. Anyway, you have not seen any. A. They are in international business. I cannot recognize the principle of a pure mutual, and I use the word "pure" in the sense I used it the first time.

BY MR. ARNASON:

Q. I referred to farm mutuals. A. Yes, these

local, municipal and regional farm mutuals operate within a group of people who know each other and who do business with each other. That is a different matter from some mutual which is operating at large, and sometimes even operating internationally.

Q. You think that the size of the group makes some difference? A. No, the nature of the group would have more to do with it than the size of it.

BY MR. PARKER:

Q. You have been here all this week? A. Yes.

Q. We have heard about several kinds, among which have been the reciprocals represented by Mr. Mason. You do not think that he represents a pure mutual type?

A. No.

Q. And then, coming to the factory mutuals, you think they are taxable, too? A. Yes.

BY THE CHAIRMAN:

Q. Do you not think that Mr. Mason's clients are more nearly pure than the others are? A. I am getting back to fundamental principles. What do they take out of Canada, and what do they put into Canada? That is all that Canada is interested in, I should think.

BY MR. PARKER:

Q. And then, the American Mutual Alliance; you say they are taxable? A. Yes.

Q. And the Ontario cash mutuals? A. Yes.

Q. They are taxable? A. Yes.

Q. Then, with respect to the Ontario farm mutuals ---
A. Then, of course, that is a question of their actual nature.

Q. I say that as you heard them described and exposed to view this week you think they come within the

taxable variety or the exempt variety. A. Local farm mutuals I think are fairly free of tax.

Q. Are they entirely free? Is there anything there to tax at all in the farm mutuals as you heard them described? A. That is so.

Q. You do not think so? A. No.

Q. And then the one from Quebec, the parish group, you remember them? A. Yes.

Q. Where do they come in? A. They seem to operate in the same method as the local farm mutuals. They are local farm mutuals, and they are incorporated within a municipality sometimes -- in fact, they seem to operate as municipal organizations. I do not think they are taxable.

Q. They clearly come within the mutuality doctrine? A. Yes, that is as nearly as I can conceive -- purely mutual operations.

Q. And then, the last one, that this section of the Special War Revenue Act be removed, and that such sections be repealed, and/or that all insurers be put on an equal tax footing. Of course that last sentence does not mean very much, I suppose, where it refers to equal tax footing. There may be a dozen ways it can be done. Have you anything specially in mind? A. No; as a business man, and not as a lawyer, I suggest that when they pay income tax they should be put on the same basis in the computation of the tax as the stock companies are.

Q. And the last paragraph states:

"That the Commission recommend that the administration of these measures....."

What measures? Are you referring to the ones which you suggest should be adopted? A. Yes.

Q. And you continue, in the paragraph --

"....be brought in so far as possible, into harmony with the provisions of the administrative sections of the income tax and corporation profits tax branches of the British legislation."

What does that mean?

MR. MANN: If I may be permitted to say so, that is my baby, entirely. Mr. Hurry had nothing whatever to do with that. It is based upon the reference to the Commission in England as to the different local administrative operations. The suggestion is that this Commission cull from the different local administrative operations, as in England, such as would be useful for the purpose of collecting the tax, purely administratively, and not legislatively. I am responsible entirely for that, and I do not think I even discussed it with Mr. Hurry.

MR. PARKER: We will find out.

MR. MANN: I do not think I did, although of course I may have.

MR. PARKER: Your ideas as a lawyer are excellent, but I want to know if Mr. Hurry's ideas as an insurance man agree with yours.

BY MR. PARKER:

Q. You have read it, have you, Mr. Hurry? A. I do not know what these administrative arrangements are.

Q. You are not in a position to express an opinion on it? A. No.

Q. As to whether you agree with that recommendation or not. A. No.

Q. All right. You have mentioned that Mr. Young, one of your associates --- A. Yes.

Q. ---had brought you certain information from

Mr. Finlayson's office? A. Yes.

Q. Is he available? A. He is in Montreal -- at least, I guess he is on his way to Winnipeg at the present time.

Q. I do not know whether you consider it worth while, but it seems to me it might be worth while if you would have Mr. Young state, perhaps in a letter, exactly what information he has -- that is, if the Commission thinks that that would be desirable.

BY THE CHAIRMAN:

Q. Would you have Mr. Young make a statement on the point referred to in your deposition? A. Yes.

BY MR. VAUGHAN:

Q. In paragraph (b) we find these words:

"That the tax on income and profits in respect of unincorporated bodies such as reciprocal exchanges...."

And so on. You will note that there is a reference to income and profits. Are there two separate things in your mind when you speak of those two things, namely, income and profits or are those two words meant to mean the same thing? You have used the same two words later on.

A. Well, income tax refers to income in the sense of profits. I do not know that the juxtaposition of those two words means anything. It may be redundant. It is something which I think the drafter of the law might illustrate, but I could not do it.

BY THE CHAIRMAN:

Q. Possibly those two words were put in there to make sure that nothing was omitted. A. Possibly so. So far as I am concerned, I do not take them as having any particular significance.

BY MR. VAUGHAN:

Q. Is there not a fundamental point to be considered there, in respect of what is income and what is profit?

Have you in your mind the determination of those profits-- taking gross premium received from mutuals, or gross premiums charged to their members, or the net amount? What would be your basis of determining the income and profit?

A. Perhaps if you take it either way the ultimate result should be approximately the same. Supposing you take the factory mutuals which collect a large deposit -- we will say ten times what they expect they will be. That is the premium collected. Then, they have a large number of risks, and I believe Mr. Freeman said that the law did not allow them to continue a risk by renewal more than six years. I think the risk is written for one year, and is carried by the mutuals more or less by a renewal rider, so that the contract is continued. It did not continue for longer than six years -- I may be wrong as to the exact number of years.

MR. MANN: I think it was five years.

THE WITNESS: They must have every year some of these risks terminate -- some are cancelled and some terminate. They collect a certain amount of money in the way of premiums -- it may be deposit premiums -- large amounts of money, but they have large amounts of money being paid back. The ultimate result of taking the gross premiums, less cancellations and terminations would, I think, in the long run, probably not be entirely different from taking the amount of money which is collected from them partly by way of tax debit and partly by interest on the large amount which you set up. If they take gross premiums less cancellations and terminations, and any

re-insurance that they have within Canada--not outside of Canada--I believe they spoke about having some catastrophic insurance in the United States - they then would be on the same basis as we are.

BY MR. VAUGHAN:

Q. That would be disregarding their rebate to their policy holders altogether? A. Yes, it would be taken off as a termination.

Q. They make a large rebate at the end of the year? A. Yes.

Q. Would that rebate be taken off before you determined the profit? A. It is a bookkeeping entry. Apparently they make this bookkeeping entry and show their premiums as so much net. But in the long run, looking at it broadly, if they took their collections in and their money paid out it would seem that the figure should be approximately the same. These are figures upon which the stock companies are taxed, and I do not think that other companies would be unduly penalized if they did the same thing as we do. They could take their premiums, less cancellations and terminations. I think Mr. Gray spoke, with justifiable pride, about a \$200,000,000 risk. If they set up the ultimate cost of that at 6 cents--not allowing for interest--they would collect 60 cents per cent. That is, that company would pay \$1,200,000. That seems a lot of money. But in due course, at the end of a certain period, part of that money would go back--probably a large portion of it-- and be paid back. Ultimately it should wash itself out, pretty well. That is the manner in which government accounts are computed.

Q. I understand your idea is to take the gross premiums or net premiums, after that rebate is made, in

determining this income and profits. A. Yes, that is the position, the same as ours. We take off cancellations from our gross premiums.

Q. But are they permitted to deduct rebates in determining their income and profits? Would that be so, according to your idea? A. That contract is finished when you pay back the unused part of the premium. That is what I call determination.

Q. If that is allowable, under your plan that would be the net premium. A. Yes.

MR. MANN: Yes, if that is allowable.

BY MR. VAUGHAN:

Q. That would be allowed, according to his plan. At first I did not understand that. A. The government makes up premiums on a certain basis, and this is a government account which was submitted by Mr. Gray; and it shows net premiums less dividends or savings credited to the members. That is how net premiums were arrived at there. And that, according to Mr. Finlayson's computation, showed that in Canada that corporation made an underwriting gain -- which is of course distributed, because the words are struck out -- and that underwriting gain arrived at there is apparently arrived at in the same fashion.

Q. Do they understand that? Because I have taken that to be the whole question at stake. That is, do they understand as to whether the gross premiums or net premiums were to be taken into account in considering the profits of the mutuals? If it is a net premium, then that puts a different aspect upon it altogether, according to your recommendation. A. I am explaining what I understand to be the method of arriving at the account

in the government's books, as being on a similar basis to that which is used for stock companies.

BY MR. MANN:

Q. Do you agree with it; that is what the Commissioner is asking. Do you agree with the method the government adopts? That is all that Mr. Vaughan is asking.

BY MR. VAUGHAN:

Q. Well, whether the government adopted it or not, does Mr. Hurry explain this recommendation to mean that gross premiums are to be considered in the case of reciprocals and mutuals, or net premiums, in arriving at their income? A. This would be net premiums.

Q. Net premiums. A. Yes.

MR. MANN: I think perhaps there is some misconception, if I may be permitted to say so, with greatest respect, in the minds of the Commission. I have reference to the words gross and net.

MR. VAUGHAN: That may be so.

MR. MANN: I am wondering if you are using the word "net" to mean the premiums after deductions and cancellations and returns, and after dividends paid back.

MR. VAUGHAN: Yes.

MR. MANN: Mr. Hurry does not understand that, because it does not mean that in insurance parlance.

MR. VAUGHAN: That is the point. What I mean by "net" -- and I may be wrong -- is the net amount after the dividends have been paid.

MR. MANN: The net premium in insurance parlance, is the amount paid in, less cancellations and deductions and re-insurance within Canada. That is the net premium, and that is the basis upon which Mr. Finlayson makes his calculation.

MR. MASON: That is not according to the statute, with all due deference to my learned friend.

MR. MANN: I am talking about Mr. Finlayson, not the statute. That is Mr. Finlayson's figure as viewed by the computing authority, ably assisted by Mr. Gray.

BY MR. VAUGHAN:

Q. To have it straight: Mr. Hurry, this income or profit would be arrived at before the dividend is paid back to the policy holder? That would be on the larger amount, or before the dividend is paid. A. In the reciprocal there is no dividend, as such.

Q. The return, or whatever you call it? A. Yes. There is a charge made for insurance, apparently, according to experience. I do not know that you can point out what is dividend there, unless you establish what is a standard rate.

Q. There is a return made, whether it is called dividend, or rebate, or whatever it is; you mean that this income and profit should be determined before that return or rebate is made, is that correct; it should not be made after? A. In the case of these companies there is no amount that you can call a dividend or a rebate. I fancy the Superintendent of Insurance would be able to establish what would be a proper figure. But if he, by some method, can establish how much money was made by that corporation, or by that joint venture in Canada, then that, to my mind, is profit which would be properly taxable in Canada.

Q. That is, leaving it to some government official. What we are trying to get at is the meaning of the recommendation. My point is this: are we to understand that in arriving at income of reciprocals and mutuals

the amount would be taken before the rebate or return is made, or would it be arrived at after that has been made? There would be quite a difference. A. Yes, but there could hardly be a return made in the sense of an ordinary cash dividend in a mutual, because here there is a deposit in the case of factory mutuals of a large amount of money, out of which part of the premiums is paid, and the balance of which is returnable unused at the end of the contract, subject to certain deductions, as has been shown. I do not know how much of that can be taken as being a bonus or dividend, because it is what is called an unused portion of the large deposit originally made. And whether some portion of that can be set aside as a dividend, I cannot say. But the principle would seem to be that, if they take their account on the basis of cash in and cash out, then there should be ascertainable a figure representing profit in Canada.

Q. That is the whole point, is it not; I do not know whether we are clear on it yet. You have used the words "representing profits in Canada"; that is profits before or after that return has been made? The intention is that that profit shall be determined in Canada before or after that rebate has been made.

A. Supposing I put it this way: I made reference to a risk of \$200,000,000, if the initial deposit on the basis of 60 cents per cent were made, that firm would put up \$1,200,000. Supposing at the end of three years they decided to go out of that venture. Then, there would be so much of the deposit returned.

Q. How much of it would be returned? A. If the annual charge were on the basis of 60 cents per cent, and the annual cost was \$1,200,000, then at the end of

three years there would be a total debit against them, for premiums earned, of \$360,000. And that would leave them, out of the \$1,200,000 the sum of \$840,000 to be returned to them.

BY THE CHAIRMAN:

Q. Out of the \$1,200,000? A. Yes; I hope my arithmetic is correct.

BY MR. VAUGHAN:

Q. Would you base your profits on the \$1,200,000, or on the \$1,200,000 after the deduction of the \$840,000, or on the net of \$360,000? A. The net premium, in that case.

Q. On the \$360,000. A. Plus interest on the \$1,200,000 which, of course, is part of the premium, because part of the premium is paid out of interest on the deposit.

BY MR. ELLIOTT:

Q. And this \$360,000 in the aggregate represents all the expenses, including losses of the exchange? A. That is the statement made, yes.

MR. MANN: I should like to ask one important question.

THE CHAIRMAN: Go ahead.

BY MR. MANN:

Q. Mr. Hurry, I am wondering if you understand the Commissioner's point of view. What you say is cash in and cash out, deducting one from the other, is what represents the earnings -- profits, or anything you like to call it, or surplus, -- in Canada? A. Yes.

Q. Now, the cash in, in Canada in respect of company A, was a \$200,000,000 policy. The cash in would be the deposit that was put up? A. Yes.

Q. That is cash in, is it not? A. Yes.

Q. And we will leave it at that. You have proceeded on the basis that all companies operating in Canada should be taxed in respect of the difference between cash in and cash out, broadly speaking. Company A has paid cash in in the year 1945 of \$1,200,000? A. Yes.

Q. That is correct. A. Yes.

Q. And we leave Company A entirely by itself, as the only possible insurer in that joint venture. And the losses and the expenses in respect of Company A policy, in many plants, as it may be, are \$1,000,000; and the difference is \$200,000, by mathematical calculation, is it not? A. Yes, that difference is \$200,000. But that does not answer the question, does it?

Q. I have not asked you a question yet, except as to the mathematical accuracy of what I have been saying. That is right, is it not?

MR. MASON: Apparently it is not.

THE CHAIRMAN: On the \$200,000 figure there is no doubt about your question being right.

BY MR. MANN:

Q. Now, taking the \$1,000,000 loss and expense from the cash in, what you deduct is cash? A. Yes.

Q. And it leaves \$200,000? A. Yes.

Q. And is that the taxable income? A. No.

Q. Would you please tell the Commission what, in your mind, is the taxable income?

BY MR. PARKER:

Q. What else did you take off before you arrived at it? A. This \$1,200,000 is not the premium for one year of insurance; and in making up the taxable income there is an item coming in known as reserves.

BY MR. MANN:

Q. I understand that. A. Supposing that were the only risk written by this company, and that they wrote it in 1945, and for an undetermined period--let us suppose they wrote it for five years--then that policy at the end of 1945 ---

Q. But you see, your difficulty is, as I said, that there was one policy for one year in one joint unit -- one joint venture. A. Yes. All right; there is just one policy for \$1,200,000 premium written in 1945. That policy we will say is written for a period of five years, or three years, as the case may be. Then a certain reserve has to be set aside and lodged with the government out of that premium; and in calculating profit you cannot put your loss against \$1,200,000, but against such proportion as is left after the reserve is put up. If that policy were for five years it would be assumed that in six months, on the average--and in that line--only one-tenth of the premium would be applicable to the year of account.

Q. Well, let us go further; on the first day of January, 1945, a policy is issued to company A, and a premium deposit is made of \$1,200,000. A. Yes.

Q. At midnight on December 31, 1945 calculations are taken; the policy runs out at midnight on December 31, 1945, and it has been found that over the entire year of 1945 \$1,000,000 has been used of that \$1,200,000 to pay expenses and to pay losses and to pay anything else you like. I think that is in the form of expenses or deductions.

MR. PARKER: That is the trouble, with all due respect, whether or not you include the reserve.

MR. MANN: No; because that company is starting on

January 1, and the reserve is arranged statutorially on January 1. There is no unearned premium reserve until after one year's operations. A. Yes; the policy expires on December 31.

Q. Yes. I have not come to the calculation of the unearned premium reserve of 1946, because we have the meeting on December 31. Only \$200,000 is left. Is that the residue or cash in, as against cash out, to which you referred, which creates the taxable income to which you have referred? A. That policy having expired and terminated on December 31 of that year, and the premium being wholly used for that year, the taxable profit would be that to which you referred.

BY MR. VAUGHAN:

Q. Can we not get it down to what is actually taken as income? In the case mentioned would the \$360,000 be income, or would the \$1,200,000? Profit is deducted, and it would result in either profit or loss. What is taken is income. Would the \$360,000 or would the \$1,200,000 be taken? A. What is actually taken in, in the computation by the Superintendent of Insurance, I do not know.

Q. I mean according to this recommendation, what would be taken in? A. According to that recommendation it would be the actual premium collected in Canada, less returns of cancellations and terminations.

Q. That is, \$360,000, in the case you quoted would be put on the credit side as income. A. That appears to be correct, yes.

MR. PARKER: I am wondering whether, by questioning someone, we might not finish this examination this morning.

THE CHAIRMAN: We will sit until we finish it, that is all there is to it.

MR. PARKER: You do not propose having an afternoon session.

THE CHAIRMAN: Not if we can help it.

MR. PARKER: I should think fifteen minutes each might finish it.

THE CHAIRMAN: I appreciate that these gentlemen have not been given ample time, and if it is necessary to go into the afternoon, we will do so; there is no doubt about that. We had other plans for this afternoon, but they are neither here nor there.

MR. MASON: Speaking for my learned friends and myself, if the Commission will be good enough to sit and give us approximately fifteen minutes each, we will try to conclude before luncheon adjournment.

THE CHAIRMAN: Very well, proceed.

MR. MASON: I will not go beyond one o'clock.

BY MR. ROBERTSON:

Q. Mr. Hurry, you admit there is a difference between a mutual and a stock company? A. There is a difference between a mutual and a stock company, you say?

Q. Yes; there are differences? A. In their organization, yes, essentially.

Q. What is the fundamental distinguishing characteristic as between stock companies and mutual companies?

A. Simply in their ownership.

Q. Yes; and I suggest to you that the fundamental difference is that in a stock company there is a profit motive, and in the mutual company there is no profit motive? A. I do not think I would just go all the way

with you on that.

Q. Would you go part of the way with me? A. No, I disagree with you.

Q. What do you say is the matter of distinction -- a question with which Mr. Ham had some difficulty?

A. The difference is simply in the ownership, and the person to whom the profits are payable.

Q. Just a difference in ownership. A. So far as I can see, yes.

Q. But that constitutes an essential difference.

A. That may be so, yes.

Q. In your mind is it so; do you agree that that is the essential difference? A. So far as ownership is concerned, yes.

Q. In the case of Ontario cash mutuals, how do you propose that they be taxed? A. I suggest that they be taxed upon their profits.

Q. Let us have your interpretation of what their profits are. A. I listened to the evidence with regard to ownership of those mutuals, and I gathered that something like 10 per cent of the ---

Q. I beg your pardon; I think we have cleared up the matter of ownership; we understand all that. Now, what are their profits? A. Their profits are profits made by an enterprise consisting of what was said to be about 10 per cent of the policy holders.

Q. Give me the items which would be profits -- and I have in mind underwriting profits and income on investment. A. Yes.

Q. That gives you a lead on what I think might be profits. A. Yes; underwriting profits would be brought down in their accounts. They would show in their operation

accounts a certain surplus.

Q. Yes. A. After bringing in all their revenue, and paying all their expenses, they would show a surplus to which, as a Canadian corporation, they may be subject to income tax.

Q. Does that include investment income? A. Yes, as a Canadian corporation it does.

Q. And underwriting gain? A. Yes, and underwriting gain.

Q. There is no other item which goes to make up this thing we call profits? A. I am trying to visualize a balance sheet. The profits would be the balance brought down as a result of all operations.

Q. That would be made up of investment income, and the sublimated figure which comes out of your account, called underwriting gain or loss? A. Yes.

Q. You would tax our investment income, but you do not tax earned? A. As a Canadian corporation you would be subject to tax on the final result.

Q. I am not asking for an application of the present Act, but I am asking you what your proposal is, and I am pointing out that in the case of the Ontario cash mutuals you would tax on investment income, but you would not tax earned income; is that what you say? A. Well, ---

Q. Just answer the question, please. A. The stock companies are taxed upon their total income, including investments.

Q. All the stock companies? A. The Canadian stock companies.

Q. But you are not a Canadian stock company.
A. No, although Mr. Mann is representing Canadian stock companies as well as foreign stock companies.

Q. I beg your pardon? A. I say Mr. Mann is representing Canadian stock companies as well as British and foreign.

Q. Yes, that may be very useful information, but I am saying that while you would tax cash mutuals you would not tax Northern investment income? A. No, for the reasons I have given.

Q. But you would not tax investment income of other British or foreign companies? A. No.

Q. How long have you operated in Canada? A. Since Confederation, 1867.

Q. And what foreign money--and I am using that term without any offence, at all--what foreign money did the British company bring in here in the year of Confederation? A. I am sorry, I did not hear your question.

Q. What money was initially brought in by the Northern Insurance Company? A. Certain money had to be deposited.

Q. What money? A. Certain deposit moneys, which are regulated by statute.

Q. Well, we speak of money with a dollar sign.

MR. MANN: Are you referring to subscriptions of capital stock of Northern Insurance Company?

MR. ROBERTSON: I will qualify it for the witness, if he will let me.

MR. MANN: And would you please clarify it for me, because I might have to object, if you are going into details as to investment.

BY MR. ROBERTSON:

Q. The Northern Insurance Company, entering Canada, was required by statute to make a deposit? A. Yes.

Q. How much? A. I do not know.

Q. Have you any idea? A. No.

Q. You have not? A. No, because the deposits have varied through the years. The requirements of the Department of Insurance have varied through the years.

Q. They have varied? A. Yes.

Q. What have you now on deposit with the Receiver General? A. I shall have to look it up, but I think it is about \$800,000 or \$900,000.

Q. As of 1942 it was \$750,000? A. 1942, do you say?

Q. Yes, I find that in the 1942 blue book. A. And it was subsequently increased by reason of the increasing business.

Q. And where does the increase derive from?

A. The increase in the deposit?

Q. Yes. A. It is really derived from our general funds.

Q. In Canada? A. Not necessarily. In actual physical fact it is just a question of transferring security from one vault to another.

Q. You would have the Commission understand, from your evidence in chief as outlined to Mr. Mann, that these securities are taken out of a very strong vault of the Northern company in London, England, and carried over to an escrow agent, which may be the Bank of Montreal, and earmarked for the superintendent? A. Yes.

Q. That is what occurred originally. A. I presume so, yes, although I was not there.

MR. MANN: Well, it was seventy-seven years ago.

BY MR. ROBERTSON:

Q. The point I make is that that deposit held for Canada has grown very materially? A. Yes, it has.

Q. And it has grown out of Canadian business.

A. It has grown by reason of Canadian business, yes.

Q. And will you not say that it was out of Canadian business? A. It must necessarily be taken out of the premiums.

Q. And your admission, as I understand it, is that the investment income of that money flowing from and originating with the Canadian business up to this time has escaped all taxation? A. No, I do not agree with that.

Q. It escaped all taxation on the investment income? A. On one side of the account, yes.

Q. Yes, that is so. A. But, of course, there are counter-balancing things, as I said before.

Q. What are they? A. There is the matter of re-insurance, which I am not allowed to deduct, not being a Canadian company. That is re-insurance done outside of Canada; and there is the matter of a contribution to general administrative expenses, and ---

Q. Now, Mr. Hurry ---

MR. MANN: You asked a question, and I wish you would permit him to answer it.

BY MR. ROBERTSON:

Q. All right, exhaust what you intend to say.

A. And I suggest to the Commission that if one was set against the other I do not think my own company--and I am expressing a personal opinion--I do not think my own company would be prejudiced to the amount of income tax it might have to pay.

Q. Let us look at it from this point of view: why is Northern transacting business in Canada? What is the motivating influence behind its doing business in Canada?

--keeping books, or making re-insurance, or profit? Which is it? A. The company is a limited liability company, a stock company, as you call it, and it is in business to make a profit for its shareholders, if it can do so.

Q. And if it did not make money it would not stay in Canada. A. Over a long period; but there are many years when they lose money heavily.

Q. But over a long period it would not stay in Canada? A. There has got to be a balance.

Q. And it is fair to say that it has made a substantial amount of money since it commenced? A. Yes, that is a fair inference.

Q. With the money made in Canada it feeds the surplus with the Superintendent, and that money bears interest which you admit escapes taxation? A. On that side of the account, yes.

Q. Ultimately there is a net profit at the end of the account, and that money is the money which bears interest and which escapes taxation, is that correct? A. That is so, yes.

Q. And you say it is fair to have that money escape taxation--that is, the investment income on that money--but to tax cash mutuals? A. A Canadian ---

Q. That is your position, up to date, is it not? A. If you take the cash mutual which comes in from another country ---

Q. Now, just a minute ---

BY THE CHAIRMAN:

Q. I would like Mr. Hurry to complete his answer. A. A cash mutual which comes in from another country would be in exactly the same position as Northern was, in that the income upon the security which that company

puts up for the security of Canadian policy holders would not be -- the income on that would not be taxed.

BY MR. ROBERTSON:

Q. That is right, if it came in from outside.

A. Yes.

Q. But it is the insurance dollar in Canada that we are talking about. A. Yes; I agree with that.

Q. But in the case of cash mutuals you say that that insurance dollar, or whatever part of it is profit, would be taxable? A. Yes.

Q. But with you it is not. A. That is correct.

Q. You have said from the point of your ancestry, and I suppose you are a Scotch Presbyterian ---

MR. PARKER: I do not think he has put it on that ground.

BY MR. ROBERTSON:

Q. You think Canada should be interested only in what comes in and what goes out? A. That is correct.

Q. Now, looking at your statement for 1942 ---

A. Of the Northern Insurance Company?

Q. Yes; I would like to know what certain items mean. I am now looking at page 540 of the 1942 blue book, where it shows taxes of \$20,000? A. Yes.

Q. What is that? A. Those are taxes, other than income and excess profits taxes.

Q. Your taxes under the War Revenue Act would be there? A. Yes.

Q. How many thousand dollars is it? A. \$20,521.

Q. And you pay that tax; and then at page 541 we see that the only income and excess profits tax you pay is about \$2,000? A. It is \$2,690.

Q. So that we have a total tax of \$23,200.

A. I believe that is correct.

Q. You had a premium income of what? A. It will show at the bottom of page 540; I believe the figure is \$680,543.

Q. Now, what about your marine business? Did you make money on your marine business? A. I do not handle it.

Q. But you told us you sent an account to England -- two accounts? A. Yes.

Q. One to satisfy Mr. Finlayson and one to satisfy your board? A. Yes.

Q. In the Finlayson accounts, so far as they relate to taxation, your marine business does not show.

A. Marine business is reported to him.

Q. I said in so far as it relates to taxation; in other words you do not pay taxation under the Special War Revenue Act, or under the Income Tax Act. A. No.

Q. I am not suggesting that you do this, but it would be possible to make a loss on your other business, and pick it up on your marine business.

A. That is conceivable.

Q. It is conceivable? A. Yes.

Q. How do you justify the non-payment of any tax on marine business, then? A. Marine business is international business.

Q. Yes. A. And no part of the risk is incurred in Canada. In fact, the risk does not accrue until it has left the shores of Canada. It might, as a matter of fact, never touch Canada at all. It might start from New York or it might start from South America, or from somewhere else. But the marine business is not business transacted in Canada. Then, in the second place --

and perhaps I am thinking out loud, and should not do that.

MR. MANN: Think as loud as you like.

THE WITNESS: I suppose if those premiums were to be taxed in Canada it would be quite as easy for the company to have that business reported to its marine agent in New York. Our company writes marine business in Canada through an agent who operates a pool, and we have a share of that pool, because marine risk at the present time is quite expensive. It is big business, and ---

BY MR. ROBERTSON:

Q. And it is profitable business. A. There is an underwriting gain brought down, but the underwriting gain in marine business is carried forward from year to year. They have what they call the 1945 account. It might not be closed for several years, until all losses are ascertained and paid. Marine business operates differently from the method of writing down the underwriting profit of a company from year to year on fire business, which is on a shorter term basis, and which is much more easily ascertainable as to loss. In respect of fire the losses are known immediately. On the other hand, in marine business it might be years before losses are known.

Q. And the Canadian wanting marine coverage, how does he pay it; is it in Canadian dollars? A. I do not know. If he is paying it in Canada ---

Q. The insurer for marine pays it with Canadian dollars, does he not? A. He will pay it in Canadian dollars if it is in Canada.

Q. And in any event, in respect of Canadian citizens, marine business is paid by Canadians with their money?

A. That is right.

Q. I am not speaking about United States dollars or Canadian dollars. I suggest to you that there is a very large volume of Canadian insurance business, in the marine branch, paid for by Canadians in whatever currency you like to say, that escapes all taxation for Canadian purposes; is that correct? A. That would appear to be so, yes.

BY THE CHAIRMAN:

Q. Do you know, Mr. Hurry, whether it would be good policy to exempt marine insurance for any particular risk?

A. I never have had occasion to explore that risk.

Q. Had it anything to do with the protection of our ports? A. That may be so. I think the whole thing has been seriously considered by parliament, and the effect of the retention of business in Canada would really have some bearing upon it.

Q. I understand that that is so.

BY MR. ROBERTSON:

Q. Do you know why it would flee from Canada?

A. I do not.

Q. You do not know? A. No. I suggest that it is possible that if premiums were taxed here the business could be quite as easily transacted in New York.

Q. Just one step further, and I am only asking for information, and I am not suggesting that I know anything about marine business, at all. Would it pay an insurer in marine insurance today, if a 2 per cent tax was put on marine premiums, to effect that in New York?

A. I do not know.

Q. I suggest to you that with a discount on Canadian money he would save money by taking it here and

paying 2 per cent, rather than paying a premium of 11 per cent to take it in New York. A. I do not think that the value of the currency -- that the discount on the currency has any relationship to the matter at all.

Q. Why do you say that? A. Because if I am insuring Canadian values in Canadian dollars and paying Canadian premiums I am in no different position if I pay American dollars for American insurance. If I pay the premiums in United States dollars I am still just paying 1 per cent, or whatever the rate is. The currency does not really matter, does it?

Q. I should think it would, to a Canadian trader having Canadian money.

THE CHAIRMAN: The risk is not Canadian, once it leaves our port.

MR. ROBERTSON: Quite right.

THE CHAIRMAN: It is international.

BY MR. ROBERTSON:

Q. But I cannot see this, as a matter of expense to the Canadian shipper who does not make any loss--we will say the ship does not sink. It will cost him to carry that risk something in Canadian dollars. That is his currency; that is where he makes his money. That is the currency of his country.

BY MR. VAUGHAN:

Q. Are the rates in Canada based upon New York rates -- that is to say, are rates in Canada paid in Canadian funds 10 per cent or 11 per cent higher than New York rates? A. They would not be, and for this reason, that if the rate is the same -- and I think there is a general agreement with respect to rates, although I am not familiar with it, and I do not follow the marine

business very closely -- but I think the rate is understood to be 1 per cent. Then, if I am insuring in United States dollars -- we will say \$1,000 in United States dollars -- I pay for that \$10 in United States currency or the equivalent in Canadian currency.

Q. You would pay \$11? A. Yes, but that is for \$1,000 of United States currency insurance. But if I insure \$1,000 in Canadian currency, then I pay only \$10 in Canadian currency for it.

Q. But in determining the rates on that \$1,000 Canadian premium, is that based upon New York prices, and an amount added on? A. No, it does not make any difference because it could be in pounds, which would make it one pound per thousand pounds. It would be 1 per cent in any funds no matter what the currency was.

BY MR. ARNASON:

Q. Do you know the extent to which marine insurance in the United States is taxed? A. No, I have no information about that at all.

BY MR. ROBERTSON:

Q. In the case of a Canadian shipper, who does not anticipate a loss, is it not usual that it would be easier for him to pay a 2 per cent tax here than to insure in New York and pay 11 per cent?

MR. PARKER: I cannot see why one would ever secure insurance at all if he did not figure on anticipating a loss.

THE WITNESS: He is still paying the same rate, whether he pays it in American or Canadian dollars. If he is paying insurance with Canadian funds, he is paying the equivalent of whatever the rate is -- perhaps 1 per cent in Canadian funds. If he used American currency

to buy American insurance to the extent of \$1,000 it would only cost him \$9; but if I in Canada wanted to get \$1,000 of insurance in United States funds, and used Canadian funds to pay for it, I would pay approximately \$11.

Q. If there were a tax here, in the result it would scare all marine business out of Canada? A. I am afraid so. However, I am just expressing an opinion, as you have asked me.

Q. In any event, there is a lot of profit in the marine business; what justification is there then for ---

A. I am not accepting that statement; the marine business is not always profitable.

Q. What is your justification for eliminating all the profits in the marine business from taxation?

A. That marine business is purely international, and the profits are not earned in Canada. The business might be, as I say, in any part of the world, even although the insurance is asked for in Canada.

Q. What about profit on Canadian premiums, on the business that derives in Canada? The Canadian dollar goes into marine insurance, and your company or the Continental, for example, makes a profit out of it?

A. Yes.

Q. Why should not that be taxed? A. I do not know. There is some reason for it --by general agreement, and the government probably have good reasons for what they have done in the matter. I have not explored it, because I am not interested in marine business, and therefore cannot answer the question.

Q. Are you familiar with the report of the Continental Insurance Company as it appears in the blue book?

A. No, but I can look at it, if you wish.

MR. MANN: That is a United States company, is it not?

MR. ROBERTSON: Yes.

BY MR. ROBERTSON:

Q. I show you the 1943 blue book. A. Yes, I find it at page 212 in the 1943 book.

Q. And it appears that their marine profit for the year was \$389,000, was it not? A. They call it marine gain, \$389,000.

Q. And the other gain is \$63,000? A. Yes.

Q. For a total of \$452,000? A. That is correct.

Q. Of which only \$63,000 would be liable for taxation? A. That is correct.

Q. Can you find on the preceding pages where income and excess profit taxes are charged on their other business? A. No.

Q. Is it taxed? A. I do not know; it is not shown here, so far as I can see.

Q. I observe that it was set up differently from your return, because you did show income and excess profit taxes. A. I think it is shown by all companies, if they paid any.

Q. That is your understanding; as you understand it the \$63,000 should bear tax? A. That is so.

Q. And my statement is true, that from the statement in the blue book, apparently no tax was imposed. A. I would not assume that. It is not shown here, but it may have been omitted by mistake.

Q. And, Mr. Hurry, if your company does make a profit out of marine business to that extent in Canada, it has a preference over the other companies with which you are competing in other lines of business.

A. I cannot see that.

Q. If you do make a profit in your marine business, that is a preference over your competitors, is it not?

A. The profit, of course, cannot be ascertained for many years, as to whether there is or is not profit, but marine business is entirely separate and specialized business. It is handled mostly by marine specialist brokers.

Q. In your business do you make a profit on your marine business? A. I beg your pardon?

THE CHAIRMAN: Mr. Hurry has not anything to do with marine insurance, so far as I know. He has so stated.

MR. ROBERTSON: His company takes marine business, though.

THE CHAIRMAN: His company has a separate department handling that business. I understood him to say that.

BY THE CHAIRMAN:

Q. Is that not correct? A. Yes.

THE CHAIRMAN: I do not think it is fair to press the witness on that subject.

MR. ROBERTSON: I did not so understand it.

BY MR. ROBERTSON:

Q. You do not know about your own marine business?

A. I said so, several times.

Q. Well, I did not understand it in that way.

MR. MANN: I heard him say it.

BY MR. ROBERTSON:

Q. In connection with arrangements as to the basis for taxation of profits, under income and excess profits legislation, I suggest that that goes back to 1933, does it not? A. Was that the origin of the Special War Revenue tax?

Q. I suggest the arrangement as to the application of the excess profits tax goes back to a letter, like the one I show you, which is dated 1933.

MR. MANN: Is it not customary in Toronto to show counsel letters before handing them to witnesses -- because if so, I would like to see that letter.

THE CHAIRMAN: I do not know that it is necessary to object in that way. You can ask Mr. Robertson to let you see the letter, and that would be sufficient.

MR. MANN: I meant no offence, at all.

MR. ROBERTSON: I understand the obliqueness of Mr. Mann's language.

MR. MANN: I must defend myself on that point. I know there are different rules of cross-examination in Ontario -- they are different from what they are in Quebec, and I thought there might be a different rule with regard to the production of a letter of this kind. I must defend myself on that point. I understand there are no names in this letter.

MR. ROBERTSON: No.

MR. MANN: That was all I wanted to know.

THE WITNESS: I am familiar with that letter, in substance.

BY MR. ROBERTSON:

Q. It is a letter dated February 17, 1933, and is the basis upon which the excess profits tax is applied to insurance companies. A. Yes.

Q. Has there been any departure from that?

A. No, except that there has been a change in rate.

MR. PARKER: I think that letter should be placed on the record.

THE CHAIRMAN: It will not mean very much to the

Commission unless it is filed.

MR. ROBERTSON: I intend to file it. The letter speaks for itself, and it will be placed on the record. I will ask to have it copied into the record. The letter is as follows:

DEPARTMENT OF INSURANCE

Feb. 17, 1933.

"Memorandum for British and Foreign
Fire and Casualty Insurance Companies

The Department has been advised by the Commissioner of Income Tax that in the computation of the taxes payable by the above companies for the business of the year 1932 under The Income War Tax Act, 1927, and amendments thereto,

- (1) The taxable profits will be the underwriting profits only in Canada
- (2) The underwriting profits in Canada will be the excess of the premiums earned in Canada (on the basis of the full unearned premium reserves) over the losses and expenses incurred in Canada,
- (3) No tax payments made under section 14 of the Special War Revenue Act will be allowed as an expense but such payments under section 14 of the said Act will be allowed as a deduction from the tax payable under the Income War Tax Act.
- (4) All transactions by way of revenue or disbursements with companies not registered with this department are to be excluded
- (5) No allowance will be made for a portion of the companies' head office expenses as a charge against the underwriting profits in Canada.

The companies, therefore, should note that

Item 7 Head Office proportion of general expenses

in the losses and expenses incurred on page 13 of the annual statement forms as furnished by the department is to be disregarded and no amount of this account is to be included in the statements for the business of the year ended December 31, 1932, as required to be filed with the department on or before March 1, 1933.

G.D. Finlayson
Superintendent of Insurance."

MR. HAM: This is a copy, is it not?

BY MR. ROBERTSON:

Q. Have you the original of it? A. I think it is quite probable that I have the original of it. It was sent to all companies.

Q. A circular letter? A. Yes.

Q. Which went to all British and foreign insurance companies? A. Yes. I am cognizant of the substance of it, but whether I actually received it or not, I cannot swear.

Q. The rates of income tax at that time were much lower than they are today? A. Very much lower, yes.

Q. And I suggest to you that it is on the basis of that letter that your argument in justification of the differential of 2, 3 and 4 per cent was based? A. I presume so, yes. I do not know what actuated the mind of the department, though.

Q. The arrangement made in 1933, at which time the differential of 1 per cent under the Special War Revenue Act was set out, was substantially equivalent to the income tax at that time. A. There was no differential at that time, at all.

Q. None? A. No; all companies paid the same tax of 1 per cent to the dominion government.

Q. At that time? A. Yes. If you are referring to the differential at that time, there was no differential.

Q. There was no differential? A. No.

Q. But I say it was based upon that letter. A. I do not know what was in the minds of the insurance and taxation departments.

BY MR. MASON:

Q. Referring first to schedule H. A. That is the sketch.

Q. And, before I proceed, so that we may have an understanding, our time is growing short, and if you can answer my questions yes or no it would be better. However if you cannot, you may have to take further time. With reference to schedule H, is it correct to say that these figures represent all types of insurance in Canada relating to fire? A. All insurance reported to the dominion government of Canada.

Q. There is nothing here which indicates the experience of joint stock companies as distinguished from any other type? A. No.

Q. Have you filed with the Commission, or have you any statement to make to indicate what the change in rates, if any, has been since 1920, with reference to the joint stock companies represented by C.U.A.? A. No.

Q. Have you ever prepared that? A. No.

Q. Is there any material available to that effect? A. It would be difficult to extract, but it could be done, I think.

Q. And you have told the Commission that certain features came in, which affected the business -- such as concrete buildings, and so on? A. Yes.

Q. Is it a fact that the element of competition

increased substantially in the year 1900, and on?

A. Yes, there always has been competition, and always has been a free market in insurance.

Q. Is it a fact that the competition increased after 1900, or 1910, or thereabouts? A. I would think that possibly it did.

Q. The reciprocals first came into the field in volume in 1910? A. I was not here then, but I suppose that is correct.

Q. At least, the policies effected by the new mutuals -- the American Mutual Alliance, and other mutuals, increased very greatly in volume after the turn of the century? A. I presume so.

Q. And may I ask a question about the C.U.A.; I understand you are an officer of it. Please tell me how many of the companies who are represented by the persons filing this brief are not members of the C.U.A.

MR. HAM: When I was examined by Mr. Gray I undertook to amend the exhibit showing a list of the companies, and which of those companies were members of the Canadian Underwriters Association.

THE CHAIRMAN: I do not think Mr. Hurry knows that.

MR. HAM. I believe the figure was 167.

BY MR. MASON:

Q. Do you say that this brief represents all the stock companies doing business in Canada in fire, automobile and casualty on the cash plan, other than mutuals or cooperatives? A. It is so clearly set out.

Q. Is it so? -- because there are certain insurance companies which occur to my mind immediately, and which cause me to wonder. Take, for instance, the Halifax Insurance Company. Do you represent them? A. Yes, I

think so.

Q. Can you tell me? I will not take time to check it. A. It is a matter of record, anyway.

Q. Then, can you answer this: are there joint stock companies insuring in Canada on behalf of whom this brief has not been filed, and to whom this brief has not been submitted? Can you answer that? A. I would have to refer that question to Mr. Ham.

MR. MASON: If Mr. Ham will file the information I will not take further time on the question.

BY MR. MASON:

Q. Can you tell me what percentage of the insurance business in Canada is performed by C.U.A. members?

A. I cannot give that figure exactly, of course. It is a large percentage of the business.

Q. If you have not worked it out I will not trouble you further on the point. A. It is a matter of record.

Q. Is a joint stock company allowed, in making an income tax return, as an expense the amount paid under the Special War Revenue Act? A. Yes.

Q. Do you keep any securities actually with the Receiver General of Canada? I am speaking of your own company. Or, are all those securities kept in London, England? A. There is a parcel of war bonds kept here -- Canadian war bonds.

Q. To what extent do you keep securities in the hands of the Receiver General, physically, in Ottawa? A. Quite a small percentage.

Q. Two or three hundred thousand dollars, probably. A. The figure shown in the blue book is correct, and I think it is shown as \$87,500.

Q. How much? A. The figure shown in the 1942

is \$87,500. Any securities held in Canada are listed in our return. So that there is no need to tell you that.

Q. Then, we can take it as \$87,500? A. That is the amount of these war bonds. But there are other investments in Canada which are listed here.

Q. And the income from those war bonds is not taxed, is it? A. No, it is not taxed.

Q. Have you made a careful study, so that I can discuss it with you, of the agreement that is used at certain reciprocal exchanges, as attached to the brief filed on behalf of the American reciprocal association? A. No, I have read it cursorily, but I have not studied it. All I know about the reciprocal operations is what I have heard in court, here.

Q. You save me a lot of trouble by making that frank answer. With deference, and with every respect, I thought from your evidence that you had not been familiar with the reciprocal system. You have made no study of the reciprocal system, and know nothing about it, except what you have heard here? A. That is correct.

Q. You do say that in the last analysis any responsibility for income tax or excess profits tax under the reciprocal system is ultimately in the individual subscriber? A. That is so.

Q. Then, you made one statement which I am afraid is perhaps incorrect, if I may say so respectfully. You say all companies are put on the same basis by Mr. Finlayson. You are speaking of the annual return? A. Yes.

Q. As shown in the blue book? A. Yes.

Q. Have you been made aware, either here or elsewhere, that one objection to the statement made by Mr. Finlayson with respect to the reciprocal exchanges is

that in his return he takes no particular account of the method by which the exchange operates, and he shows certain amounts as underwriting profits which the exchange says is a misnomer. A. I have heard that objected to, yes.

Q. And you said that there are no Canadian reciprocal exchanges? A. I understand that; I do not know of any.

Q. You have had one appearing before you for some time.

MR. GRAY: I will gladly accept the limitation of concluding my examination by one o'clock, and undertake to sit down at that time.

BY MR. GRAY:

Q. Mr. Hurry, I should like to ask you to identify this mimeographed blank form which I now hand you, as being the form prepared by the Department of Insurance for use by your company and other companies in computing income war tax and excess profits tax of joint stock companies; is that correct? A. I have not seen these forms before.

Q. And nothing like those forms? A. No.

Q. I am afraid you cannot help me, then. Please give me them back. Then, regarding the marine insurance business, I want to put to you, for the purposes of the record -- though, not necessarily, as a question -- this statement: under the Special War Revenue Act, section 13 (f), a copy of which I have in my hand, there is a definition of net premiums subject to tax under that Act, and marine insurance premiums are not therein mentioned or excluded; do you object to that? A. That is correct, I believe.

Q. And in section 13 (b) of the same Act there is

a definition of the word "company" as subject to taxation under that Act, and in that definition companies carrying on marine insurance business are excluded; do you accept that? A. It is a government publication; I must accept it.

Q. Then, so far as the Northern is concerned, is it or is it not a marine company? A. It is a company doing all classes of business.

Q. Yes. A. Including marine, and life, and everything else.

Q. You do not think you are excluded by the definition of company, as a marine company, under section 13 (b). A. I do not know.

Q. Well then, how under that Act do you get any exemption for marine insurance premiums from the application of the Special War Revenue Act? A. I never have had occasion to examine marine figures at all because I do not handle marine, and know very little about it.

Q. One more question: is there any reference in the Income War Tax Act to the exemption of marine insurance premiums from taxation?

MR. PARKER: That is not a proper question.

BY MR. GRAY:

Q. For the record, there is no such mention of exemption?

MR. PARKER: That might not be correct.

BY MR. GRAY:

Q. All right; do you know under what authority the marine insurance premiums received in Canada by the Northern Insurance Company are excluded from your account for income tax discount? A. I do not know.

Q. Now, you made reference in your evidence to a

certain section of the factory mutuals brief -- the original main brief, in the first sentence of which at page thirteen are used certain figures. I am quoting from the third paragraph:

"The average premium rate for fire insurance in Canada for 1942 (as reported in the Dominion Insurance Blue Book at page (X) is 66 cents for \$100 of insurance for one year."

You have called my attention to the fact that these are not annual premiums only; have you not? A. That is correct. There is a comment by the Superintendent.

Q. I accept that correction, and thank Mr. Hurry for it. I ask that the words "for one year" be struck out of that sentence to which he has called attention.

THE CHAIRMAN: That is at page thirteen of the main brief, is it?

MR. GRAY: Yes.

BY MR. GRAY:

Q. With that amendment, I call attention to the fact that the other figures that are thus compared are not annual premiums. That is to say, the 62-cent rate is not an annual premium, or the 58-cent rate; do you agree? A. Yes.

Q. So that with the amendment I have made, do you find anything inaccurate or unfair in either the representations or the conclusions I have drawn? A. If it is a statement of fact there can be nothing unfair about it.

Q. Then, you also made reference to a statement in the factory mutuals brief at page six with regard to the so-called underwriting profit of the British companies on Canadian business over the long period of sixty-six

years, and it says in that paragraph --- A. Is that the paragraph with the word "bathetic" in it?

Q. I am referring to the paragraph which begins with the words "of course war conditions" - and so on. I ask you to note the words in brackets, "the figures are not prepared by us", and where it is stated that they are taken from the Dominion Insurance Department Blue Book. Then I ask you to note this sentence in the middle of the paragraph, "this amount is 7.94 per cent of the premiums".

A. Yes.

Q. Does anything you said this morning in your evidence invalidate the fairness of the representations involved in that statement? A. I think I explained to the Commission that after this figure, whatever it may be -- possibly 7.94 per cent -- is arrived at, that there is a great deal to be done which costs a great deal of money, and that the profits which the British companies make out of business in Canada are not profits on which they are taxed in Canada.

Q. I refer you to the first exhibit in the factory mutuals brief to which you have made reference. A. That is the book with the grey-covered binding.

Q. This was a schedule which came in for some attention this morning during your testimony, and I am asking you now to observe what this shows on two points, first as to claims incurred. In the government statement, which is exhibit No.1, I see that claims incurred are put in at \$148,024.29 for the Canadian field. A. Yes.

Q. As I understand it -- and we have submitted this -- that represents fire losses physically located in Canada. A. So I understand, yes.

Q. Then, look at exhibit No.2, prepared by the

company for the same item of losses incurred during the year, and you find a figure of \$99,195. A. Yes.

Q. Do you observe from that that in the year 1945 the Manufacturers Mutual Fire Insurance Company experienced actual losses in Canada of \$148,000 in respect of which they charged the Canadian members only \$99,195?

A. That might well happen in any year.

Q. Yes. Then, one other point: you suggested in your testimony that we ought to use the premiums shown in the Dominion blue book figures. You will recall that evidence has been given that these are derived from the returns of the company as shown at page fourteen of the annual statement form of the Superintendent of Insurance.

A. Yes.

Q. Now, will you please look at exhibits 1 and 2 again. You will see in exhibit No.1, which is the Dominion government return, that the net premiums written are put down at \$415,000; is that correct? A. Yes.

Q. That is the amount on which you say the tax ought to be applied against these companies, is that correct? A. If that is the ---

Q. This company, for that year. A. If that is the figure representing premiums, less return.

Q. Yes. A. Yes.

Q. Then, look at this, "premium deposits absorbed during the year, \$593,617. A. Yes.

Q. Do you observe that the company has suggested that the proper amount upon which Special War Revenue Act should be applied is \$593,617, and that the figure which you are willing to accept is \$415,000; do you observe that? A. That is the figure for that year, apparently. Of course, the premiums earned in that year

are affected by the reserve. There is an increase of \$127,000.

Q. You wanted written premiums, and I have given you written premiums. I suggest there must be some good reason why this company would come here and say to this Commission that they ought to be assessed on a larger figure than that which you suggest; is that correct?

A. I am quite prepared to be satisfied that you do everything with good reason, Mr. Gray.

Q. One more question, referring to the premium figures submitted in your supplementary brief which you interpreted this morning for the Commission. I am referring particularly to exhibit C of your supplementary brief.

A. The 1943 business.

Q. Yes; I accept your warning that it is one thing to show a figure and another thing to interpret it.

A. Yes.

Q. That is your idea? A. Yes.

Q. You interpreted those figures to your own advantage in the statement you made earlier.

MR. PARKER: No, not to his own advantage, just correctly.

BY MR. GRAY:

Q. You interpreted them in a certain way? A. Yes.

Q. The figures I gave you by way of amendment of your exhibit are the figures for the absorbed premium deposits during that year by the companies, and correspond to this figure of \$593,617 in exhibit No.2, which is part of our brief. And the figures which you have used in your original exhibit, as submitted in the brief, are derived from the Dominion Blue Book, which is on the basis of exhibit No.1 in the factory mutuals submission.

I ask you, then, to accept this statement, that the distinction which is exhibited by this showing in the factory mutuals brief, exhibits 1 and 2, is the same difference which is exhibited in the amendment to your exhibit C in the supplementary brief? A. For whatever that may imply, of course your statement is correct.

BY MR. MASON: With your permission, Mr. Chairman, I overlooked asking the witness this question. At page 549 of the Northern Assurance Report, in the superintendent's report -- A. Is this 1942?

Q. You do not need to look it up. There is an item of \$13,000 odd for underwriters' boards tariff associations, and I see similar large items in the returns of other insurance companies? A. Yes.

Q. Does that represent in part a substantial payment to the Canadian Underwriters' Association and, if so, upon what basis is the return made? A. It represents, to a very large amount, the cost of the inspection of these sprinklered and fire-proofed risks, and all the the rest of it, which are inspected very carefully by a expert engineer, regularly. That is a very expensive thing, and of course the general rate-making plan of the association, the inspection of waterworks and advice to municipalities as to how to improve conditions in the towns, so as to bring about reduced rates -- that makes up the expense.

Q. On what basis is it made? A. It is made according to premium income of the members. It is divided up.

Factory Mutual Fire Insurance Companies

Supplementary submission in answer
to Briefs of Income Tax Payers
Association, Joint Stock Insurers
and Stock Company Agents

(Concluding statement of Mr. Evan
Gray. See also Transcript, Vol.
XIX, Tuesday, April 17)

The Special War Revenue Act

The factory mutuals acknowledge the concession of the joint-stock insurers, in paragraph (c) on page 11 of their brief, that the Special War Revenue Act, imposing a premium tax at the rate of 4 per cent on premium-deposit mutual companies and 2 per cent on joint-stock companies, is unfairly discriminatory, and that this inequity should be remedied by making uniform the rate of premium tax on all types of insurer.

In their main submission, the factory mutuals have said that the equalization of the premium tax under the Special War Revenue Act would produce substantial additional revenue, (page 28). Figures given us by the Dominion Superintendent of Insurance show the following amounts collected under Section 14, as tax on 1943 premiums:

Ss (1) - at 2% - Joint stock and stock mutuals	\$1,917,086.54
Ss (2) - at 3% - Ordinary mutuals and Lloyds	408,192.50
Ss (3) - at 4% - Premium-deposit mutuals and reciprocals	<u>56,191.02</u>

Total - \$2,375,470.06

The marine insurance premiums written in Canada would, if included at 1943 levels, add about \$10,000,000 to taxable premiums. At present, only marine premiums received by domestic companies are assessed for income and excess profits taxes and all marine premiums are excluded from special war revenue tax. It is accordingly estimated that a uniform tax

of 4 per cent on all insurance premiums, other than life, would produce about \$2,435,000 additional revenue, or a total of about \$4,750,000 annually.

General

The factory mutuals regret that they do not find other parts of the joint-stock insurers brief so well supported, either in fact or in principle, and they must take issue with the stock companies' submissions and those of the Income Tax Payers Association and stock company agents regarding the application of the Income War Tax Act and the Excess Profits Tax Act to mutual insurers. The factory mutual companies will not undertake to offer a general reply on the whole range of the above mentioned briefs, which go so far beyond the concerns of the factory mutuals. But, in dealing with our very limited field of interest, it may be necessary to point out what we believe to be errors in submissions touching general principles of much wider application than our own business.

"Equality of Taxation"

The slogan, "Equality of Taxation," adopted by our competitors in their briefs is strangely unrealistic. It is no less impracticable in the business world than is 'equality of sacrifice' as a principle of personal service in the armed forces. Even in the case of individuals, the income tax has never set equality of taxation as an objective, much less as a principle. The married and the single man, the taxpayer with or without dependents, unusual medical expenses, earned or investment income, gifts to charitable objects and a graduated tax: all these are items of discrimination in our income tax legislation, adjudged fair and equitable, which deny any such easy cliché as 'equality' in the planning of an income tax system. And if one goes outside income tax,

to customs duties, excise and sales taxes, 'equality of taxation' is never regarded as a controlling principle. The user of spirituous liquors and the teetotaler are not equally taxed; nor are the users and the non-users of theatres, pullman berths and telegraphs. A multitude of other illustrations spring easily to the mind. A stock company which makes a profit and a stock company which makes no profit, are not equally taxed. How equality of taxation could be achieved in regard to all corporations or persons engaged in the fire insurance business passes imagination. It may comfort the brief writer to quote a jingle from a judicial opinion written in an insurance case Kansas (State v. Wilson, 192 Kan. 752):

"He who hopes a faultless tax to see,

Hopes what ne'er was, nor is, nor e'er shall be."

It was not 'equality of taxation' which inspired parliament to challenge the royal tax-gatherer in the early days of its history, as suggested by the Income Tax Payers Association brief; it was 'taxation according to law' that parliament sought to attain, instead of taxation according to the royal whim or the Chancellor's need; that is a very different thing. Discrimination has always been and always will be the most important element in sound fiscal policy. Discrimination should, of course, be fair and equitable; only unfair discrimination comes justly under indictment. Without intelligent discrimination in the application of taxation to different forms of business enterprise, some enterprises will be distorted or destroyed and their original purposes defeated.

The suggestion is found in all the briefs filed by our competitors that all income derived from or in the course of similar business should bear the same imposts of income and profits taxes regardless of the form of organization of that

business. This suggestion is surely unsound as well as inexpedient. Suppose a retail merchandising business, showing net annual operating surplus of \$100,000, is owned and controlled, respectively, by: an individual, a partnership of four persons, a joint-stock company of many shareholders, a co-operative association and a public authority. It is an impossible proposition that \$40,000 for income tax should be levied upon and collected from that business before its profits are allocated, regardless of the ownership and destination of the profit. The individual owner is entitled to his personal exemption and, perhaps, to set off against these profits the loss he has experienced in another similar business in another town. The partners divide the proceeds by four and then apply the exemptions, deductions and graduations of tax appropriate to their circumstances. Shareholders may sell or dispose of their shares before any dividend is declared, and the profit distribution may be made to shareholders in a variety of ways or not at all. The co-operative and the public authority may, on grounds of sound public policy, be exempt from taxation. Talk about equality of taxation, in such a variety of form and purpose of business organization, is over-simplification of a most complex problem and no answer at all to the demand for a reasonably intelligent and equitable tax system.

Referring especially to the insurance business, one can no more treat mutual, stock companies, reciprocals and Lloyds alike in taxation than you can run these organizations through the same mould as to form and management. All four were organized in different forms to serve different purposes and different needs. All four are essential to the public interest with which this commission is concerned. All four require discriminating treatment in taxation as well as in other forms of public regulation.

The Incidence of Income Tax

Another fundamental principle of sound fiscal policy is contradicted when the Income Tax Payers Association brief declares (paragraph 89 and elsewhere) -- "The real test is, how the profit originates or is earned, and whether the profit is taxable or does not depend in any way upon its ultimate destination or distribution." That is surely unsound fiscal doctrine, even if so distinguished a jurist as the late Lord Blackburn applied it in the interpretation of a statute in a particular case, with which we are not concerned. Surely it is necessary to study the final incidence of any tax to determine how the public interest is affected thereby; and this commission is charged with the consideration of public interest as a basis of fiscal policy.

Even if the dictum accredited to Lord Blackburn -- and it can be nothing more than a dictum -- has any legal validity in the interpretation of a particular statute, it does not make common sense to the legislator or to the Minister of Finance. Of course it matters whose income is taxed and, of course, it matters whether or not the nominal taxpayer is the ultimate taxpayer. Does not parliament and the minister choose between a sales tax and an income tax as alternative sources of public revenue on considerations of whether or not and to whom the ultimate incidence of the tax is shifted? Is not the import duty on farm machinery affected by consideration of who finally buys and uses the machinery? Were not the people and parliament of Great Britain concerned about the final incidence of the duty on wheat and cereals in the great debate on the repeal of the Corn Laws, and did not the Joseph Chamberlain plan for Imperial Preference fail of adoption by reason of such shibboleths as -- "Don't tax the poor man's bread!"

Under any corporation tax, the real taxpayer is not the legal entity, so much stressed in the filed briefs. The real taxpayer is the person who is deprived of the use and enjoyment of the money or value which the Receiver General collects and, in the case of a corporation income tax, the identity of that taxpayer is determined by the ownership and control of the corporation. The ownership and control of a joint-stock insurance company is an investors' interest. The ownership and control of a factory mutual insurer is a policyholders' interest. Of course, the fiscal planners must discriminate in taxation of such different interests according to the destination or distribution of the income affected.

It is an accepted maxim of taxation that any taxpayer will shift the incidence of his tax to another if he can. Some taxes are more easily passed along than others. For example, the premium tax on insurers is, for all classes of insurers, a tax passed on to the policyholder in increased premiums. But income tax is another matter; fire insurance premium rates take no account of income and profit taxes on joint-stock insurers. Such premiums are based upon an average loss-cost, weighted for average expenses, excluding income tax, and after that they are controlled or affected by the competition of mutuals, reciprocals and Lloyds. In the final result, the shareholder pays the corporation income tax, in so far as the corporate profits are thereby reduced. This is thus a tax on investment income of the shareholder, which, being uniformly applied to all business, cannot be shifted.

It is otherwise with mutual insurers. All corporation taxes are added to the cost of insurance paid by the policyholder in a mutual company, since there is no other interest in the company. The factory mutual policyholders in Canada are all engaged in business and trade and these taxes, as

items of additional insurance cost, become part of the cost of production or distribution in the policyholder's business. They thus affect the policyholder's competitive position in his own business. All corporation taxes imposed upon mutual insurers fall upon the policyholder and are passed on in whatever manner his business permits. The economist must advise as to the final effect of such an impost.

The Legalistic Viewpoint

The briefs filed by our competitors present the legalistic view of the problem of this commission. Naturally enough, they contain very little factual information about the business of mutuals or joint-stock insurers in Canada, and they seem to have ignored the economic, social and political considerations of public interest which any tax proposals must involve -- except in so far as the slogan, "Equality of Taxation," can be interpreted as a political aspect.

Now the factory mutuals have nothing to fear from a legalistic view of their tax liability. The decisions cited by the Income Tax Payers Association brief seem to make the exemption of factory mutuals from income and profits taxes a matter of common law, apart from their statutory exemption. We refer particularly to the following decisions of the House of Lords:

New York Life vs. Styles (1889) 14 Appeal Cases 381;

Cornish Mutual vs. Inland Revenue (1926) Appeal Cases 281;

Jones vs. South West Lancashire Coal (1927) Appeal Cases 827;

Municipal Mutual vs. Hills (1932) 16 Tax Cases 430.

To the above cases could be added many decisions in courts of the United States, where some factory mutual companies have carried on business for more than one hundred years.

Nevertheless, we submit that this commission can get little help with its problem from decisions of the English

or any other courts, and it certainly is not bound by decisions of any court in deciding what are to be taxable income or when or where such income should be taxed. The problem referred to the commission is a question of fiscal policy, to be decided on considerations of "the public interest." This public interest is not determined by the legal nature of corporations nor even by the interpretation of the present wording of the Income War Tax Act.

Legal decisions relate primarily to the facts of a particular case as presented in evidence. As presented in the submissions of the Income Tax Payers Association, these decisions show a strange pattern of inconstancy of opinion in the courts of England in relation to statutory provisions and methods of co-operative business -- which are not Canadian statutes nor Canadian business. The effort to show progressive development of judicial opinion on a principle of taxation liability only succeeds in showing variety of opinion to date, and in demonstrating that the argument still continued in England, without finality. If the House of Lords has been overruled by its own judgments or by inferior tribunals, as suggested by the submission of the Income Tax Payers Association, this commission is not likely to get more help from the later than from the earlier decisions. The briefs have, however, made clear that the Canadian enactment of Section 4 (g) of the Income War Tax Act in 1917 was substantially a statutory declaration of the common law principle, as recognized by the courts of England at that time. In Canada, this exemption is still the law, irrespective of subsequent developments in England.

What Lord Blackburn said or thought about the issues of a particular taxation case in 1883 can be of little consequence to this inquiry. It is very unlikely that the noble and

learned judge had the advantage of any such observation of the activities of co-operatives or the study of the methods of business now under consideration, as this commission has had since it was constituted. It would be most surprising if judicial comment and opinion from another jurisdiction, founded on such limited material as the evidence a particular case provides, would be found helpful in the present inquiry.

In particular, the Income Tax Payers Association purports to find in the judicial opinions cited, that:

(a) Corporations are legal entities separate and distinct from the members thereof:

(b) That the income tax is a corporation tax.

As to (a) above, there can be no doubt that corporations are legal entities: they are certainly neither physical nor spiritual entities. They have no body to be flogged nor a soul to be saved. Neither indeed have they any property or possessions to be taxed, except property and possessions belonging in truth to some natural persons whose legal instrument or agent is the corporation. The legal fiction which creates a corporation and the statute which makes it the medium for collection of tax cannot resolve any of the social, economic and political problems which concern natural persons. There are times when the legal fiction, called a corporation, can be discussed as such; but when discussing taxation, it is quite wrong to speak of corporations as separate and distinct from the members thereof, since even a superficial inquiry soon discloses that every corporation is owned and controlled, directly or indirectly, by some natural person or persons who have a specific purpose to serve through its activities. It may be quite true to speak of corporations legalistically, apart from their members -- but it is not true for any other purpose; the separation of the legal entity from its members is as much a legal fiction

as is the original idea of a corporation. In taxation matters, it is quite as wrong to regard corporations as separate from their ownership and control as it is to assimilate corporations which have different social and economic purposes to serve.

As to (b) above, one might just as well say that a customs duty is a tax on lumber or machinery. Of course income tax is a tax on corporations and customs duty is a tax on lumber or on machinery, but surely this only means that the corporation, or the lumber, or the machinery is the agent or the occasion by which tax is collected from somebody, who is ultimately deprived of the enjoyment of the money or value taken by the tax collector. It does make a difference who owns or controls the corporation-taxpayer, just as it makes a difference who owns and who will eventually use and pay for the lumber and machinery. The idea that the public significance of a tax ends with the corporation which pays it over, is quite unsound, economically, socially and politically, whether or not it has any legal validity.

The Factory Mutuals are the Members Thereof

To bring the foregoing observations more directly to bear on the position of the factory mutuals, consider the following provisions of the incorporating act and the by-laws of the Manufacturers Mutual Fire Insurance Company, (one of the group of factory mutual insurance companies on whose behalf this submission is made), which are among those extracts from the charter and by-laws which are printed on every policy issued by the company in Canada, as well as in the United States:

Act of Incorporation:

"Section 3. Every person, firm, association, and corporation insured on the mutual plan (and all are insured on the mutual plan) by said corpor-

ation shall be a member thereof during the life of his or its policy but no longer, and at all meetings of the corporation shall be entitled to one vote, either in person or by proxy

By-laws:

"Article V, Section 4. Each premium deposit for a policy on the mutual plan is to be deemed a deposit made by the insured with the company. The portion of this deposit unabsorbed by the contributions to the company's losses, expenses and reserves is to be returned to the insured at the expiration or earlier termination of his policy....."

While it is true that the factory mutual companies are legal entities, it is not true that they are separate and distinct from their members; in fact, their members are themselves the corporation. They participate in the savings effected in the management of the business; they control the corporation by their votes at every policyholders' meeting; they elect the directors; and policyholders' directors formulate the policies to be carried out by the executive.

In addition to all this, the members assume a contingent liability equal to five times the amount of their premium deposit, in case losses and expenses exceed the available cash funds. It has often been said in adjudicated cases that in mutual insurance companies, policyholders are both insured and insurers. That is true in the final analysis in the case of the factory mutuals. So long as the available funds are sufficient to meet the demands upon the companies, then the policyholders are seen in the capacity of the insured; but if those funds should become insufficient, then that provision of the charter and by-laws of the companies comes into play which fixes a liability upon the policyholders in the form of a contingent assessment liability and so they do become

insurers.

The Nature of the Premium Deposits

The briefs of the joint-stock insurers and the Income Tax Payers Association have argued that all moneys received by the factory mutual companies are income, from which they wish to draw the conclusion that, after the expenses and losses of the companies have been paid, all moneys returned to policyholders are profit of the same quality as dividends paid to shareholders. Very clearly this is not so in the case of the factory mutual companies. The premium deposits received by the companies are not income to the companies in the sense argued in the stock companies' brief. One might as well say that deposits made by customers in a chartered bank are income to the bank. It should be clear from section 4 of the by-laws above quoted that the premium deposit of a policyholder member is a sum for which the company is accountable to the member and in respect of which he preserves legal rights recognized by the constitution of the company.

The case of *State v. Wilson*, 102 Kan. 752, 172P. 4143, L.R.A. 1918 D. 955 illustrates this point very clearly. This case arose in the State of Kansas, which had a statute taxing the gross premiums of all insurance companies "without any deduction for dividends, etc." A mutual insurance company (not a factory mutual) transacting business in that state, refused to pay the tax on its gross premium deposits and maintained that it was only liable for a tax upon that part of the premiums it received in Kansas which was retained by it for payment of losses, expenses and reserves. The court said in the course of its opinion:

It is a prudent policy which for the time being exacts from the policyholder somewhat more than the estimated amount needed to pay the proper charges on an insurance business.

The inherent uncertainties of any business commend such foresight. But neither the insurance company nor its patrons should be penalized for so doing; and moneys received as premiums, but returned because not necessarily for premiums, should not be taxed as such."

The above is but one of many cases that have held that only the net retention out of premium deposits is taxable, regardless of the statutory provision that "gross premiums" shall be taxed. A similar decision to which reference may be made is Mutual Benefit Life Insurance Company vs. Harold, (Internal Revenue Collector) 198 Federal 199 (1912).

The premium deposit in the factory mutual companies is not unlike the case of a broker or factor who is commissioned by his client to purchase a parcel of real estate for which the client is willing to pay not more than \$5,000. He instructs the broker to purchase it at as low a price as possible, not to exceed the maximum of \$5,000 and in carrying out the arrangement, he deposits with the broker the sum of \$5,000 for the purpose. The broker then negotiates the purchase of the property for \$4,000. Clearly the difference between the amount left with him by his client and the purchase price is not the property of the broker, but belongs to the client and the broker is accountable to him for it. The same holds true in the case of the factory mutual companies. The premium deposit is in a sense an advance assessment which the company receives for a specific purpose, and when that purpose has been accomplished the balance remaining out of the deposit, if any, is returnable to the policyholder.

It is admitted that the policyholder is not entitled to this return until it has been voted by the board of directors, but it must be borne in mind that the power of the directors over the savings effected in the conduct of the business of

the mutual fire insurance company is not absolute. A board of directors will not be sustained in refusing a distribution of savings if there is bad faith, wilful neglect or abuse of discretion. (Greef. vs. Equitable Life 160 N.Y. 32). It is also to be remembered that the boards of directors of the factory mutual companies are themselves policyholders, chosen by the body of the policyholders to carry out the purposes of the policyholders and of no one else. The policyholders are themselves the company, and if at any time the directors should refuse to return what the policyholders consider an equitable proportion of the savings, or, in fact, any part of the savings or any part of the assets of the company which the policyholders determine they want returned, then it is within the power of the policyholders to remove the directors and elect others in their stead who will carry out their purpose.

The argument of the joint-stock insurers refers to the premium deposit made by policyholders as capital of the mutual company, fulfilling the function and bearing the same relation to the mutual company as the share capital does to a joint stock insurer. (Page 5) This is intended to support a claim to tax the investment income of the mutual on policyholders' funds in the hands of the company. But adoption of this argument would at once free the unabsorbed premium deposit from any charge of income tax liability, since it fastens on them the character of capital repayment -- which would be non-taxable as income. The joint-stock companies should elect to say which of these inconsistent positions they desire to adopt respecting the unabsorbed premium deposit. The factory mutuals reject both alternatives and submit that the premium deposits of the policyholder member are neither income nor capital of the company and

have no counterpart in a joint-stock company system.

The Nature and Application of Investment Income

As for investment income from policyholders' funds, such income is no different to the company than the absorbed portion of the policyholders' premium deposits, so far as tax is concerned. Investment income is, by the provisions of the by-laws printed on the policy, applied in exactly the same way as the absorbed portion of the premium deposit. The following is Section 8 of Article V of the by-laws of the Manufacturers Mutual Fire Insurance Company:

"Sec. 8. The income received by the company from its investments shall be applied to the payment of expenses of conducting the business, taxes, losses and reserve."

On page 2 in paragraph 4 (2) of the joint-stock companies' brief, the submission seems to admit that in the case of factory mutuals the surplus contributions of policyholders over losses and expenses is not taxable income, on the basis of the decision in the South West Lancashire Coal Owners Association case. But the same paragraph adds, the revenue from interest, dividends, rents and other sources, such as reinsurance premiums, etc., however, is taxable income in the hands of the corporation, inuring "to the profit of" the members. When it is remembered that both principal and interest of the reserve fund of the Factory Mutual Company are held for the benefit of the policyholder, and regard is had to the application of the interest-revenue provided for by the above quoted section 8 of the by-laws, it seems quite impossible to distinguish this part of the revenue of the company from that received from any other source whatever. Once again it may be pointed out that the "annual net profit or gain" of any taxpayer must include all his income and all his deductions in a single account, producing a net balance

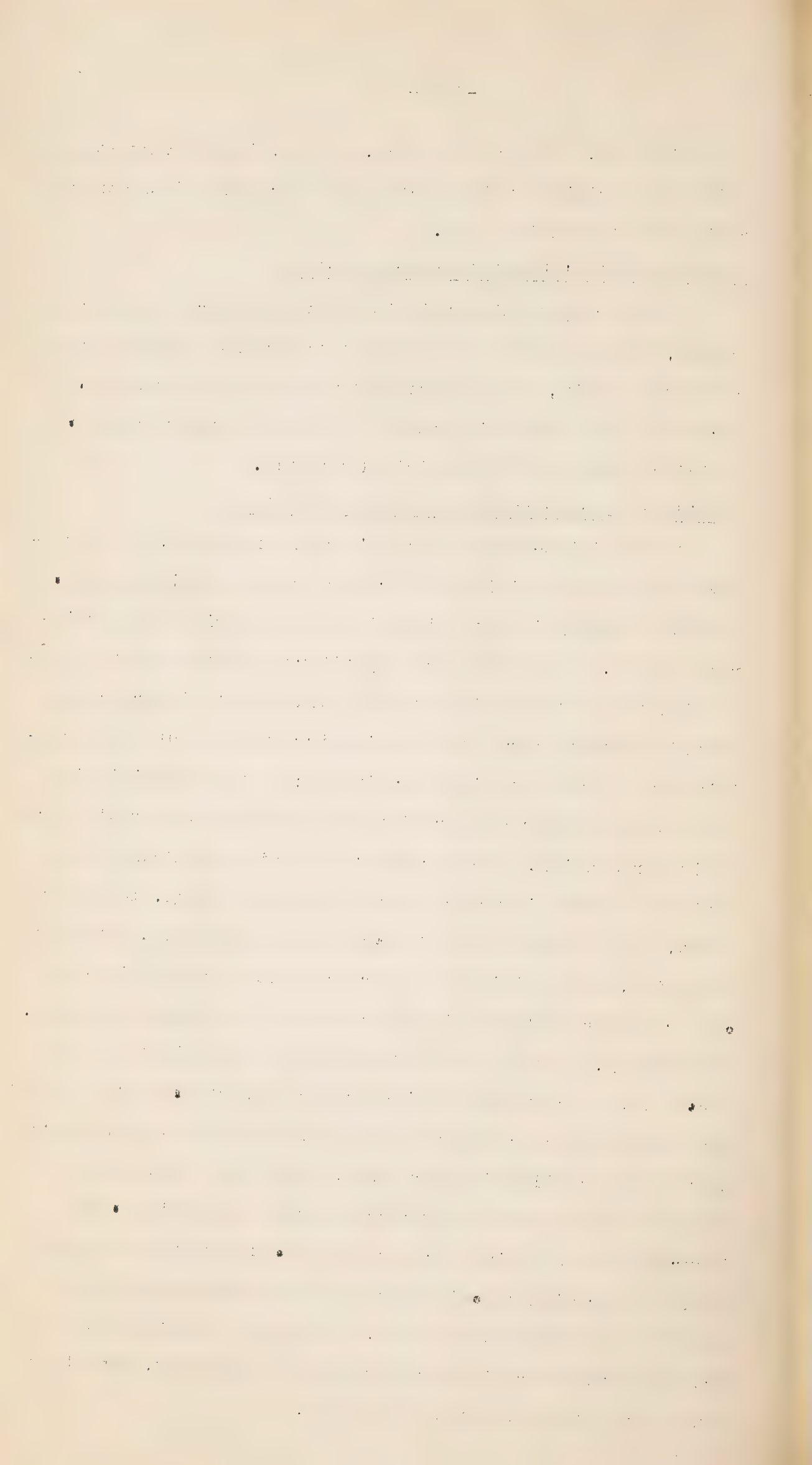
or deficiency. That net balance, if any, is the very item to which the decision in the South West Lancashire Coal Owners case was intended to apply.

Stock Companies' Participating Policies

In the respectful submission of the factory mutual companies, there should be no doubt of the right of the stock company to claim, as a deduction from income for taxation purposes, all moneys disbursed to policyholders in respect of policies issued on the participating plan.

"Dividend" Declarations of Mutual Companies

In the joint-stock insurers' brief on page 7, it is represented that the dividend or return on the premium deposit of a mutual company is determined in some mysterious and arbitrary manner, from which our competitors seek to draw the conclusion that not only is mutual insurance not "insurance at cost," but that there is something irregular about the ascertainment of the participating dividend. Only unfamiliarity with mutual insurance operation and methods could create such a misapprehension. This argument is manifestly founded upon a view of mutual insurance company practice which, to say the least, is not that of the factory mutual companies. In these companies, all policies of insurance mature on the first day of a calendar month and insurance costs are computed monthly. Accordingly, a policy which terminates on the first day of March 1945 is charged with its proper proportion of the losses and expenses incurred during the period it has been in force, up to and including February 1945. Only the losses and expenses which have been incurred during the period this insurance has been in force are used to determine the exact amount of premium deposit which has been absorbed for the payment of losses and expenses. It may be that this is not true of mutual fire insurance companies generally, but it is true of the factory mutual companies.



The participating dividend or the rate of unabsorbed premium deposit is determined by the policyholders themselves through their representatives -- the directors of the company. Their discretion as to drawing upon or adding to reserves are policyholders' decisions; this is an exercise of the same kind of judgment which determines the original differential for premium deposit by classification of risk; it is subject to criticism by policyholders in a policyholders' meeting. Finally, the actual "net cost of insurance" to the policyholder is the actual absorbed portion of the premium deposit, however that may be determined. Since the mutual policyholders find this procedure satisfactory, the criticism of the competitor is best answered by a comparison of the resulting cost of the two systems in operation on similar risks.

The Dominion Blue Book carries a continuous five year record of premiums and losses by classifications of risk. Class Number 27, i.e., "Sprinklered risks of whatever nature or occupancy," includes almost all of the factory mutual business in Canada. The Blue Book shows \$40,829,847 for written premiums in this class in the ten years, 1933 to 1942 (see 1943 report, page LII and 1938 report page XC) and incurred losses of \$11,424,362, on a steadily rising premium income. The factory mutual figures included in these totals merely distort the results, because of the different basis on which they are prepared. This was explained in our main submission (page 34). So, if we delete the factory mutual premiums and losses for the period in which they were included, (nine years) we have the results for all other companies, as follows: Premiums \$33,426,944, losses \$9,761,453 for the ten year period. This is a loss cost of 29.2 per cent (let us call it 30 per cent) of premiums on sprinklered risks, for ten years. Add an expense loading equal to fifty per cent of

written premiums, and you have an over-all cost ratio for joint-stock insurers (including the profit element in the expense loading) of 80 per cent of written premiums. Assuming, as we reasonably may, substantially all this business, excluding the factory mutuals, is written at tariff-bureau rates, it would seem that joint-stock companies' rate-differentials for classes of risk are not beyond criticism, and that such a rate was too high a price to pay for fixed premium insurance of the best protected class of Canadian risk. It is to be contrasted with 'insurance at cost' as provided in the factory mutual system. On any particular risk, competition between mutual and stock-company carriers is a great leveller of premium rates, but there must be a large volume of Canadian business on which bureau companies meet no rate-competition, to produce such an over-all result for stock company insurance of this classification.

Stock Company Submissions not Applicable to Factory Mutuals

We feel bound to take exception to certain other statements in the joint-stock companies' brief, which, at least in so far as the factory mutual companies are concerned, are incorrect. The following have been quoted:

On page 4, it is observed that, --

"If any mutual insurer has income, that income must of necessity inure to the profit of its policyholders or members, whether distributed, put to their credit or into a reserve account. These organizations are bound to realize income.....consequently are taxable."

We suppose that it is possible to imagine a mutual insurance organization to which this observation might apply. Take for example, one which does not carry on business in Canada, -- The Philadelphia Contributionship, which is the oldest mutual fire insurance company in America, founded by

Benjamin Franklin in 1752. It issues only perpetual policies, requiring its members to make very substantial cash deposits at the inception of their policies, the income from which has sufficed to pay, not only losses and expenses, but also an investment return to the insured. The cash deposits are returned intact to the policyholders at the termination of their policies. Perhaps Parliament referred to such an organization, when enacting Section 4 (g) of the Income War Tax Act, and qualifying the exemption of mutual corporations by the words, -- "no part of the income of which inures to the profit of any member thereof." An organization similar to the Philadelphia Contributionship would not be entitled to the exemption provided by Section 4 (g) if the word "profit" has the ordinary meaning of, -- "the excess of receipts over expenditures." (Words and Phrases, 2d Ed. Vol. 3) To illustrate:

Suppose, - Premium deposits in force		\$1,000,000
Investment income		30,000
		<hr/>
	Total	\$1,030,000
Deduct:		
Losses	\$5,000	
Expenses	5,000	
	<hr/>	
	Total	10,000
		<hr/>
Balance remaining for return to policyholders		\$1,020,000
Investment income available for return to policyholders		<hr/> 20,000
Premium deposits returnable to policyholders		\$1,000,000

We do not doubt that the above quoted paragraph of the joint-stock insurers' brief might be reasonably applied to the Philadelphia Contributionship in such circumstances, if it were exempt under Section 4 (g) -- (as we submit it is not). On the above illustration, it would be taxable on a net income of \$20,000.

Now compare this example with the case of a factory mutual company:

Suppose, - Premium deposits in force	\$1,000,000
Add Investment Income	<u>30,000</u>
	\$1,030,000

Deduct:		
Losses	\$40,000	
Expenses	<u>50,000</u>	<u>90,000</u>
Balance available for returns		\$940,000

Surely no one -- not even joint-stock insurers -- will say that the return of \$940,000 to policyholders who have contributed \$1,000,000 represents a "profit" to policyholders, which deprives the factory mutual company of the benefit of the exemption under Section 4 (g)! The premium deposit system simply cannot be poured into the mould of thought which would produce such a conclusion.

Premium deposits are not receipts in the sense of the income of a mercantile enterprise, but are money left with the company out of which to pay losses and expenses, the balance to be returned to the policyholder. It follows that such returns are not a distribution of income and, hence, do not constitute "profit" to the members. If this were not so, then no mutual company could have the tax exemption which parliament intended to provide by Section 4 (g) and the enactment would be wholly frustrated and ineffective.

As we have said above (page 12) the 'annual net profit or gain' of any taxpayer must include all his income and all his deductions in a single account, producing a net balance or deficiency; when you apply this formula to the policyholders' account with the factory mutuals the results will show a "loss" and not a "profit." It is conceivable that at some future time the investment income might be sufficient to pay losses and expenses and, in addition, a return to policyholders in excess of their original premium deposits. That may be a

"consummation devoutly to be wished," but it still remains for the future. When it happens, the factory mutuals will no longer have the benefit of the exemption under Section 4 (g) of the Income War Tax Act.

Under paragraph (b) on page 6 of the joint-stock insurers' brief, it is urged, --"(b) The surplus of premiums and assessment receipts over losses and expenses is also income and is 'annual profit or gain from any other source';" this observation is quite contrary to all the findings of taxing authorities in Canada and the United States and contrary to the decisions of those courts which have passed upon the matter. So far as we are aware, no judicial or taxing authority has ever reached and applied this conclusion.

Again on page 6, under the sub-title, --"This income is taxable; (a) It is the absolute property of the corporation" -- in respect of Factory mutual companies, this statement is merely a half-truth. In contemplation of law, it may be the absolute property of the corporation, but under the organization of the factory mutual companies, it is held for a specific purpose as previously shown in this memorandum. In subparagraph (b), it is stated: "The disposition of the surplus or reserve is in the discretion of the board of directors." That is also true only to a limited extent, for this control of the directors is not absolute, so far as the factory mutual companies are concerned.

In paragraph (c) under this same sub-head in the stock companies' brief, printed on page 7, it is stated: "In a mutual organization, to maintain the right with respect to any distribution of income, an assured must be a policyholder or member at the time of distribution. Here again, this is a misstatement, since, as appears from the charter of the Manufacturers Mutual Fire Insurance Company, previously quoted (at

page 11 of our main submission), all policyholders who have been members of the company at any time within six years are entitled to share in the distribution of the assets of the company in case of liquidation.

The conclusion under the next heading in the stock companies' brief (page 8) to the effect that, "the 'dividend' paid by a mutual insurer to a member is not a discount -- a repayment of excess of estimate over actual cost of carrying the indemnity of such member -- but is an arbitrary allotment of profit from a business venture," is, in respect of the factory mutual companies, a misstatement of fact. True, the so-called dividends to members of the factory mutual companies is not a discount, but on the other hand it is not an arbitrary allotment of profit. It is not profit at all, as we have consistently maintained, and it is not an "arbitrary allotment" as we have explained hereinbefore at page 13. It is merely the return of that part of the premium deposit which has not been used for the payment of losses and expenses and the maintenance of reserves.

It is noted in Schedule "C" of the stock companies' brief that use is made of the published figures in the report of the superintendent of insurance for the exhibit of underwriting profit of the premium deposit mutual companies (the factory mutuals), referred to in our main submission at page 14. Similar figures were used in the exhibits filed as an appendix to the brief of the stock company agents of the city of Winnipeg. This is additional evidence of the misunderstanding of the facts by joint-stock insurers and their agents, created by the publication of these figures, which the main submission of the factory mutuals explains and modifies under the heading, "Underwriting Profit." We must again emphasize that the information given by the published figures is misleading, since the factory mutual companies

have no underwriting profit. The formulas for the computation of underwriting profit appropriate to fixed-premium companies simply will not work when it is attempted to apply them to premium-deposit mutuals. Even the terminology of the fixed-premium business is misleading when used in relation to premium-deposit companies. For example, "earned premiums" in a factory mutual company is in reality the amount retained by the companies for the payment of losses and expenses and reserves, or approximately 10 per cent of the premium deposit in force. The balance remaining is the proportion that has not been earned; in other words, that has not been used, and, hence, is available for return to the policyholders. Further study of Exhibits I and II at pages 36 and 37 of the main submission of the factory mutual companies to this commission should remove the misunderstanding of which the stock companies' brief is the victim.

Comparison with Life Insurance

The factory mutuals cannot agree with the statement on page 10 of the joint-stock insurers' brief as to the distinction between life insurance and other classes of insurance business. The difference does not lie in the fidelity of statistical records and actuarial formulas. In practice, the life insurance business involves uncertainties in investment yields from policy reserves and many other uncertainties in the risks assumed, which no amount of statistical data will anticipate accurately, such as accidental death, suicide, total and permanent disability and non-permanent disability, epidemics and war. The cost of some of these hazards is no less and no more capable of accurate estimate than are fire and other casualty risks assumed in the field of insurance other than fire.

There can be no doubt that life insurance is "a business"

as surely as fire insurance is a business and that life insurance is conducted by joint-stock insurers for profit as well as by purely mutual insurers at cost. There seems no reason at all why the profit earned by the shareholder's interest in life insurance business is not in the same category for income tax and excess profits tax purposes as the profit earned by the shareholder interest in fire and casualty insurance business; indeed, that is the recognized fact under these acts at present. The same Canadian statute exempts from taxation in the hands of the company the moneys paid to policyholders as dividends on participating policies, whether such policies are issued by purely mutual or stock companies. Indeed, some of the British companies now carrying on business in Canada conduct life insurance departments as well as departments for other classes of insurance business under the same corporate structure and management.

It appears that the real difference for taxation purposes between life insurance and other classes is that in the taxation of the policyholder, life insurance premiums are usually not allowed as deductions from taxable income of the insured and hence the dividends to policyholders on participating policies are not taxed in the insured's hands. In the case of fire and casualty insurance the policyholder is or may be engaged in business and trade and his premiums and dividends get into his trading account. There is nothing in this circumstance which invalidates the analogy of the exemptions in Section 4 (g) of the Income War Tax Act.

Stock and Mutual "Methods of Operation"

It is submitted that the statement of the joint-stock insurers' brief at page 6, -- "The fact is that between a mutual insurer and joint-stock insurer there is little or no difference in method of operation," is quite untrue. The

main submission of the factory mutual companies previously made should be a demonstration of the profound and essential differences in purpose as well as in form of organization and methods of operation of the factory mutuals from those of joint stock insurers. How could the "methods of operation" of an insurer organized, owned and controlled by policyholders for insurance at cost, be like those of an insurer, organized, owned and controlled by shareholders for the purpose of profit? The alleged identity of function and method put forward to support a claim that income tax can be indiscriminately applied to all types of fire insurance organization has no true basis in fact. If these insurers were alike, they would cease to exist in separate forms. The stock companies themselves recognize differences between stock companies and mutuals by excluding the mutuals from all territorial premium rate-making bureaus. It is obvious that they must see some differences in methods of operation requiring such discrimination of treatment.

The stock company is run to make a profit for the proprietor; the mutual company is run to make a saving of expense for the policyholder. If there is no prospective profit available there will be no stock company insurance. The factory mutual however, being run to give the double service of fire prevention and indemnity to their members at actual cost, will be carried on regardless of profit. That means that risks which find it impossible to get adequate and appropriate insurance coverage from insurers operated for purposes of profit have had to turn repeatedly to mutual insurance to provide a service which was otherwise not available. The farm mutuals and the local mutuals insuring risks in unprotected areas are the most conspicuous examples of this process, but it has also occurred again and again in

highly specialized industrial and commercial risks for which the factory mutuals and the reciprocals were the only available service in Canada. The Canadian textile industry and the Canadian departmental stores can give testimony in support of this statement.

It is significant that the Factory Mutual Fire Insurance Companies are managed by professional engineers rather than by professional underwriters. The first concern of the factory mutual is to eliminate fire hazards and in actual practice no member is accepted by the factory mutuals until his risk has been carefully surveyed and those measures taken which the engineers advise should be undertaken to reduce or eliminate fire hazard. Thereafter, regular periodic inspections by qualified engineers keep the risks under constant surveillance. The fire prevention engineering service of the factory mutual companies is the highest standard of such service found anywhere.

The history of the automatic sprinkler is closely interwoven with that of the factory mutuals, due to the early recognition of its value by these companies and their original efforts in its development, followed by their requirement of its installation in all buildings of combustible construction or occupancy. The automatic sprinkler is one of the greatest inventions in the science of fire fighting because of its independent automatic action and has done more to preserve property and protect life from the dangers of fire than any other single factor. The names of William B. Whiting, Col. Thomas J. Borden and John R. Freeman, all former factory mutual engineers and officers, are intimately associated with the progress of this and other scientific achievements in the fire prevention field. These and others associated with the companies' long history are entitled to a share of the

credit for the favorable loss experience and the security to property which have now come to be taken more or less for granted.

Now it is obvious that a joint-stock insurer organized to make a profit for its shareholders can never have the same objectives or the same primary interest. Insurance shareholders' profits always depend on higher premiums. Policyholder interest is always in lower premiums, because policyholder benefit depends on low insurance cost. Such a vital difference results in different methods of operation. The first keeps premiums as high as competition will allow; the second keeps premiums as low as the best service will admit.

The stock companies have regulated competition in premium rates for all company members. The result is, no competition in premium rate among bureau companies. The factory mutuals, however, beginning with a uniform premium deposit, depend for the real premium upon the efficiency and skill of the management, as well as the good or bad fortune, of the individual company and the policyholder has the benefit or disadvantage resulting from success or failure. No two will have the same result, and the competition between companies to secure the best results for the policyholders continue -- though in the fire prevention engineering service a joint and uniform inspection and report system is maintained.

With the stock company, however, the competition for business turns from premium rate to competition for agency connection. Where premium rate is the same, it is usually the agent who decides with what company the business will be placed. It has never been possible for the stock company bureaus to control commission rates to agents as effectively as they control premium rates to the insured. Therefore,

competition for agencies among stock companies is fierce and constant. It is because of this that the number of stock companies in competition in the Canadian field has continued to increase beyond the economic requirements of the available business and the cost of insurance in Canada has been increased by progressively moving a larger and larger proportion of the stock company fire insurance business into the maximum commission rates for acquisition cost. Overall figures for decreasing fire insurance cost might be misinterpreted. This overall decrease comes from constantly improved building construction, fire protection and fire prevention methods. But the expense of doing business on the joint-stock company plan has steadily increased as the competition for agent controlled business becomes keener. It is otherwise with the factory mutuals, in which the policyholder has always the full advantage of reduced costs resulting from reduced hazard and where no commission-paid agents earn an advantage from high rates of commission and high rates of premium. In the factory mutual system the number of companies has steadily decreased by amalgamation, while the number of stock companies was increasing and while the so-called "fleets" of stock companies were attaching new agency connections at higher and higher commission rates.

Furthermore, the method of operation of the stock company fundamentally differs in the matter of disposition of surplus -- both systems endeavour in early years of operation to build adequate reserves to meet future unfavourable experiences, conflagration losses and special contingencies. But, when these are adequate and the volume of business levels out -- the two systems diverge in method. Earnings from underwriting and investment income earned on premium reserves and on other assets are then syphoned off to shareholders profit by the

stock company. But similar surpluses in the factory mutual system increase the unabsorbed premium deposit and thus reduce the cost to the insured. This is certainly a fundamental difference.

Stock company premium rates of bureau member companies are founded upon average experience costs for all member companies. The larger a company grows the more likely it is to have an average experience and average costs, since expenses, like losses, are nearly all in proportion to volume. But every stock company strives to do better than the average, for therein lies the hope of underwriting profit. Doing better than the average means selective risk underwriting and close adjustment of losses. For this the management is responsible to the stockholders, and fire insurance company stocks are closely held and watched.

In the factory mutual system, the management is responsible to the policyholders and here too, management is closely watched. This is a difference of interest which is reflected in methods of operation. The fact that, in the case of the oldest and largest of the factory mutuals (the Manufacturers Mutual Fire Insurance Company, which commenced business 1835), it has never been necessary for a policyholder to sue the company to collect payment for a loss, in its whole period of operation, is surely significant for others besides lawyers. It discloses the fundamental difference in management relationship to policyholders which is inherent in the system.

The Significance of All This for Income Tax Purposes

The factory mutual company is a corporate agency of the policyholder and indistinguishable from him and his interests. The joint-stock insurer is a corporate agency of its stockholders conducted to earn a profit for its proprietors. The Factory Mutual operation results in a saving in expense to the poli

the policyholder: the joint-stock insurer seeks to earn a profit for the investor. Of course, discrimination in taxation is necessary for such different operations and, equally of course, that discrimination must be intelligent and equitable.

It is a principle of income tax law -- expressed in Section 4 (n) of the Income War Tax Act, that income taxed in the hands of one corporation is not taxed in the hands of another trading corporation -- only this is double taxation avoided. The individual stockholder may, however, be assessed for income tax on dividends received from corporations which have already paid income tax and excess profits tax. That is not regarded as inequitable under the Canadian law, and is not commonly believed to be "double taxation." In this, Canada departs from British precedent. All submissions to this commission accept the position as essential war finance policy for the present circumstances.

Now, since every policyholder in the factory mutuals in Canada is a trading or business corporation, all "savings" earned by the factory mutual insurer are taxed in the accounts of the policyholder, both for income tax and excess profits tax. This must be constantly reiterated. Such savings could not be also taxed in the hands of the factory mutual company without the double taxation which Section 4 (n) of the Income War Tax Act, and Section 2 (f) of the Excess Profits Tax Act are enacted to avoid. It is true that in this case the tax is applied to the corporation receiving the benefit and not to the corporation originating the benefit, but this is the result of the nature of the deposit premium contract and ought not to be otherwise. Certainly no inequity is involved and the accepted principle is recognized. There is therefore no final exemption from Canadian income tax involved in the factory mutual system. The discrimination which exists

between factory mutuals and joint stock companies as to income tax is a true discrimination according to fiscal principle and neither inequitable nor unjust.

Income Tax Payers Association Brief, Section 100

In the concluding paragraph of Section 1 of the income tax payers association memorandum, six subparagraphs have been set out to embody the conclusions of the argument in Section I. We wish to refer to these subparagraphs:

(a) The factory mutual companies are admittedly engaged in carrying on a commercial enterprise, which is incidental to the business and trade of their factory mutual members. The factory mutual business is fire prevention and fire insurance at cost; the factory mutuals have no profits or surpluses which come within the definition of income contained in section 3 of the Income War Tax Act. But, section 4 (g) of the act should be maintained to avoid any doubt as to the intention of the statute, in order that the question which has been referred to this commission for enquiry should not become a matter of litigation in the courts.

(b) It is, of course, necessary "to look behind" the corporate form of organization of joint stock companies as well as other corporations; thus we see that these are organized and operated as profit-making enterprises on the part of the shareholder investor. No one has argued that profits derived from this source are not properly taxable under the Canadian statutes as "net annual profit or gain." Whether these profits are taxed in the hands of the joint-stock insurer or in the hands of the shareholder when received, or in both, is a matter of fiscal policy as to which the factory mutual companies have nothing to say. We merely maintain that, so far as the factory mutual companies are concerned, the savings in expense of insurance secured

through the factory mutual system are not in the nature of taxable profit or gain. It is not regarded as inequality of taxation when a joint-stock company having made a profit is duly taxed thereon, although another joint-stock company in the same business, which has made no profit, pays no tax. Similarly there is no inequality of taxation, as between the factory mutual company and the joint-stock insurer, when the joint stock insurer pays income tax and excess profits tax and the factory mutual company is not taxed under these statutes.

(c) Having regard to the provisions of the Act of Incorporations and the by-laws of the factory mutual companies, which are printed on every policy issued by the factory mutual companies, it is plain that neither from a legal nor from an economic point of view can the repayment of the unabsorbed premium deposit be regarded as anything different from repayment of moneys belonging to the policyholder after the need for them has passed. Such repayment cannot be in any way assimilated to the distribution of earnings by a joint-stock company to its shareholder members. The factory mutual repayment of unabsorbed premium deposits is no different than the withdrawal by a customer of a chartered bank of moneys on deposit with that bank. Even the Income Tax Payers Association would hardly regard the latter transaction as producing a taxable profit.

(d) The use of the term "trade discount" and "patronage dividend" in this paragraph shows that it is intended to apply to merchandising co-operatives rather than to mutual fire insurance companies. In so far as it may concern the factory mutual companies, the answer to this submission is found in the next preceding paragraph.

(e) This paragraph is not applicable to the factory mutual companies, which confine their insurance business

strictly to their own members.

Conclusion

The factory mutual companies belong to a 'free enterprise' and 'private initiative' system, which has not looked to governments for assistance and which has never claimed or sought special privilege. They belong to a competitive order of business which seeks to serve public needs in a special way which only their form of organization can provide. They seek no monopoly in any field of business nor do they seek to exclude the competition of other mutuals, reciprocals, joint-stock companies or Lloyds.

They are a non-agency system in that they employ no commission paid agents to solicit business nor adjust losses nor service their risks, but they do not depreciate the value or the services of the commission paid agent in competitive organizations, both mutual and stock. All these competitors in the fire insurance business are useful to each other, as well as to the public, and all must 'live and let live' while free enterprise survives.

From this commission the factory mutuals ask only understanding and recognition of the special character of the purpose, form and methods of these organizations, and that fair and equitable discrimination in taxation methods which such character deserves.

Respectfully submitted on behalf of Canadian members of the factory mutual fire insurance companies.

Hovey T. Freeman

Chairman, Legal Committee, Associated
Factory Mutual Fire Insurance Companies

- and -

President, Manufacturers Mutual Fire
Insurance Company

V. Evan Gray

Counsel in Canada for the Factory
Mutual Companies
1407 Sterling Tower,
Toronto 1, Ontario.

march 20, 1945.

THE CHAIRMAN: Well, Mr. Parker and gentlemen, I thank you all for almost getting under the wire on time. I understand you have arranged the question of argument?

MR. PARKER: There is just one other question, prior to that; another brief I wanted to mention. It is a brief filed by the King's Mutual Fire Insurance Company. I think it should be merely noted on the record that it is presented; there is no one here to support it.

THE CHAIRMAN: Is there a brief?

MR. PARKER: It is just a statement in the form of a letter, with no intimation that they wish to appear, as I understand it.

THE CHAIRMAN: They had better be called, to make default, then.

THE REGISTRAR: Is the representative here of the King's Mutual Fire Insurance Company?

THE CHAIRMAN: There is no one present; it will be default.

MR. PARKER: Now we come to the question of argument. Are these gentlemen prepared to state as to whether they want to argue at all and, if so, when and where?

MR. MASON: In discussing the matter, our view is that there should be argument but that, owing to the limitations of time, it would be probably desirable for the commission to direct that written argument be filed within a certain time, on the basis that there will be no question of reply, but merely one argument filed. It does occur to us, however, that the time should be sufficient to enable us to examine the evidence that has been taken, or at least some portion of it, so we can refer to the evidence. There is also this further consideration, that as the members of the commission are going to have other matters intervene, which

will necessarily eliminate from their minds a considerable part of what we have been discussing this week, and since I understand the members of the commission will be gathering very considerable data and information elsewhere, it may be thought desirable by you, Mr. Chairman, and your associates to have an oral argument at a subsequent time, when these matters can be refurbished in your minds and possibly further explained. As to that we are in the hands of the commission.

I can only say, speaking for my learned friends and myself, that we will be glad to furnish written argument and later, if you and your associates so desire, we will be glad to make further submissions.

I should like to say also, speaking for my own clients, that if any question should arise on account of the particular matter of insurance, or if an interpretation should be desired in connection with any figures, or anything else, we shall be only too glad to make the services of Mr. Gerrish available to the commission at any time.

THE CHAIRMAN: What date do you suggest for the filing of the written argument, then, Mr. Mason? Have you any idea as to that?

MR. MASON: That depends on what your own convenience will be, Mr. Chairman.

THE CHAIRMAN: What do you suggest, Mr. Parker?

MR. PARKER: It seems to me that if the gentlemen wish to have an oral argument, it is hardly necessary to present a written one first.

THE CHAIRMAN: I understand Mr. Mason's idea to be that the written argument will be submitted, and if the commission requires further oral argument it will ask for it and notify them accordingly. Is that it?

MR. MASON: Yes, Mr. Chairman.

MR. PARKER: They are not specifically asking for both, then. As to the question of time, certainly it will be some weeks before the commission will be sitting down to discuss these matters.

THE CHAIRMAN: Within a month's time?

MR. MASON: I was going to suggest that, whenever you hope to arrive at a time when you will have an opportunity to discuss the briefs, they should be there; but there is no great purpose to be served in filing them and just letting them lie on the desk.

THE CHAIRMAN: I feel safe in saying that if they are filed in a month's time they will not lie around very long.

MR. MANN: Should we say June 1?

THE CHAIRMAN: Yes, that would be convenient, I think.

MR. PARKER: Then I think that concludes everything we have for this week.

THE CHAIRMAN: All I can say, gentlemen, is that it has been an interesting week, and I am sorry we had to do a little rushing at the end.

The Commission adjourned, to meet on Monday, April 23, 1945, at 10 a.m.

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ROYAL COMMISSION
ON
CO-OPERATIVES

1945

PROCEEDINGS
(OFFICIAL REPORT)

VOLUME No. XXIV

PLACE Ottawa

DATE April 23, 1945

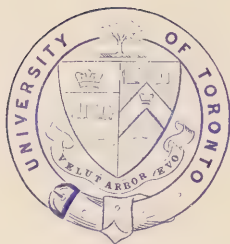
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ROYAL COMMISSION ON CO-OPERATIVES

Ottawa, Monday, April 23, 1945

VOLUME XXIV

(Pages 6602 - 6721)

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ROYAL COMMISSION ON COOPERATIVES

The Commission appointed to inquire into the present position of cooperatives in the matter of income and excess profits tax, organization and business methods and operations, and the comparative position of persons engaged in business directly competitive therewith, met in Ottawa, on Monday, April 23, 1945.

PRESENT:

The Hon. Mr. Justice ERROL M. McDOUGALL, Chairman

B. N. ARNASON)	
G. A. ELLIOTT)	
J. M. NADEAU)	
J. J. VAUGHAN)	Commissioners

Eugene T. Parker, K.C.	Counsel
Roger Brossard,	Associate Counsel

Major H. D. Woods)	
J. A. Chapdelaine)	Associate Registrars

Colonel G.W. Ross	Executive Secretary
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APPEARANCES:

R. H. Milliken, K.C.	Saskatchewan Cooperative Producers Limited, (Saskatchewan Wheat Pool)
C. G. Heward, K.C.)	
C. H. G. Short)	Canadian National Millers Association; Ontario Flour Millers Association.
M. M. Porter)	
Ben. S. Plumer)	Alberta Wheat Pool " " "
H. S. Scarth)	
W. J. Parker)	Manitoba Pool Elevators " " "
George Church	President United Farmers of Alberta.
G. H. Steer)	
H. L. Griffin)	United Graingrowers Limited, " " "
J. E. Brownlee)	" " "
W. H. Howard, K.C.)	
Cecil Lamont)	Northwest Line Elevators " " "
W. P. Fillmore)	" " "

Ottawa, Ontario,
Monday, April 23, 1945

The Commission met at 10 a.m.

THE CHAIRMAN: What is the order of business to-day, Mr. Parker?

MR. PARKER: This week has been set aside for the consideration of the grain question. There have been filed with us six briefs, one of which is perhaps a sort of three in one. There are two supplements attached to it but they can be treated, I think, as one. They consist of the three pools -- Manitoba, Saskatchewan and Alberta-- and the United Grain Growers Limited, Northwest Line Elevator, representing interests somewhat in opposition to the pools, and the Canadian Millers' Association.

I have been talking to counsel and I think it is understood pretty generally that the pools, so called, will be heard first; and of the three, I suggest that we proceed with Saskatchewan. Ordinarily, but for what happened this morning, the procedure would be as I have stated. But the Canadian Millers' Association's appointments are such that they have asked permission to come second, following Saskatchewan. I do not know how long Saskatchewan will take, but subject to your approval, Mr. Chairman, I suggest that the Canadian Millers' Association might be allowed to be sandwiched in between the Saskatchewan pool and Manitoba, unless that greatly inconveniences some other counsel. My only object is to accommodate counsel as best I can. I offer that suggestion unless there is opposition.

THE CHAIRMAN: I think Mr. Milliken has the right of way by virtue of having filed his brief when he did and the fact that he has been so long with us.

MR. PARKER: He is all prepared and I think it would be unfair to ask him to wait.

THE CHAIRMAN: Is there any objection?

MR. SCARTH: I do not know just how long Mr. Heward's presentation will take.

THE CHAIRMAN: It is on his assurance that the brief is short and will not take up much time that the suggestion has been offered.

MR. SCARTH: It was understood that Saskatchewan would be taken first and then Alberta and Manitoba and we are bringing our witnesses down accordingly. That is the only point. If their brief is not very long I do not suppose it matters.

THE CHAIRMAN: How long do you think you will be, Mr. Milliken?

MR. HEWARD: May I say, Mr. Chairman, that we have only one witness, Mr. Short. The brief covers twenty-two pages.

THE CHAIRMAN: We have found on occasion that one witness can be quite long.

MR. HEWARD: I should not anticipate that it would take more than an hour or an hour and a half. However, your lordship has more experience as to the length of time the average brief takes. I can assure the commission that our case will be very short. We were told to be here on the 23rd to arrange for a hearing. I was hoping to be able to go on first so that we could get away but that was not possible, and failing that I hoped that we would come on second, if that were agreeable to the commission and to other counsel.

THE CHAIRMAN: How long do you think you will be, Mr. Milliken?

MR. MILLIKEN: The whole difficulty is that I do not

know what other counsel will say to my client.

THE CHAIRMAN: The expression which Mr. Parker used was, I believe, that they are "somewhat in opposition".

MR. MILLIKEN: I think I can say fairly definitely that it will be about two days, though certainly I will not be two days. I have a brief twice as long as Mr. Heward's, so that I think he is rather optimistic in assuming that he will be through in an hour.

THE CHAIRMAN: Do I understand that the Saskatchewan brief will come first and Mr. Heward's clients second?

MR. PARKER: Yes; and there may be some question as between Alberta and Manitoba. The Alberta brief has only recently been filed and I do not know how much time you gentlemen have had for its perusal. I think it is desirable that an opportunity be given for that to be done.

THE CHAIRMAN: I am sure Mr. Porter and Mr. Scarth can agree on that.

MR. PARKER: I should think so, especially if it takes two days for Mr. Milliken to present his case. If that is understood, so that there will be no misapprehension on the part of counsel, the order will be : Saskatchewan and then the Canadian Millers, leaving still uncertain the question whether Manitoba or Alberta will come next.

MR. SCARTH: We will arrange that between ourselves.

MR. PARKER: Very well. Subject to the approval of the commission, following that there will be the United Grain Growers, the Northwest Line Elevators coming next. Unless someone has an objection, that will be the order. Without any further preliminaries, therefore, I suggest that we proceed with the Saskatchewan brief. I call on Mr. Milliken.

SASKATCHEWAN COOPERATIVE PRODUCERS LIMITED

MR. MILLIKEN: I propose to have Mr. Wesson, the

president of Saskatchewan Cooperative Producers Limited, go on the stand, be sworn as a witness, read the brief and be open for cross-examination.

May I say, Mr. Chairman, we have been accustomed for twenty years, both those who might be opposed to us and the cooperative group itself, to call Saskatchewan Cooperative Producers Limited the Saskatchewan Wheat Pool, and you will repeatedly find both Mr. Wesson and myself -- I am afraid I shall be guilty of the same offence --using the expression "Saskatchewan Wheat Pool" or "the wheat pool" when we mean Saskatchewan Cooperative Producers Limited, formerly called Saskatchewan Cooperative Wheat Producers Limited, but at the last session of the legislature having its name changed to Saskatchewan Cooperative Producers Limited.

It occurred to me that, as the grain business is entirely new to a great many of you, I might just for a few minutes quickly run over the history of its development. Having been born on a farm in Manitoba and having lived there until I was nineteen, I have some personal recollection of the early days of grain-growing in Manitoba and of the difficulties in developing an organization, no matter how that development came about, from nothing into the huge proportions which the grain business came to assume in the west in a very short time.

Originally the Railway Act provided that the railway company should furnish warehouse facilities to take care of commodities shipped on the railways. That was an enormous undertaking in connection with grain, particularly as grain growing developed in the west., and the railway companies conceived the idea of erecting terminals, but not country elevators, and gave what was regarded as a monopoly to any elevator company that would erect an elevator at a shipping

point. If it erected a certain type of elevator the railway said, "We will allow no one else to get cars to ship grain from that point. I am talking about the nineties. That caused a great deal of, I will not say hardship, but certainly unrest among the grain-growers because they could not get cars to ship wheat, and the first grain commission was appointed in 1897 to investigate the problem. If you will allow a personal reference, the farmer representative on that commission was my uncle. That commission recommended loading platforms and the farmers got cars and a car order book. That was at the turn of the century.

So much grain was grown in Manitoba that it was described as Manitoba grain and not Canadian; and as a matter of fact, in Europe they call our wheat Manitobas because our grades originally were all Manitoba, and not Canadian or Northern as they are now called. The Manitoba Grain Act was passed in 1901, the first act, and about 1906 the farmers organized a commission grain firm, the parent of the present United Grain Growers. They organized that commission grain firm to save money in commission on the sale of grain. It is ancient history now and there is no use bringing before you the troubles that organization ran into.

By 1911 the provincial governments of the west decided that they would encourage the development of cooperative or farmer-owned elevators. In Saskatchewan the Saskatchewan Elevator Company was incorporated and the farmers would form a local at a shipping point and put up fifteen per cent of the purchase price, the government advancing the other eighty-five per cent. In Alberta and Manitoba there were similar companies. The United Grain Growers is the salesman of the Manitoba and Alberta companies. You will be hearing

much more about this from them later on. Following the conclusion of the last war the wheat board was set up for one year -- that was in 1919-20 -- to market all wheat.

That was so successful, largely because of price, that the farmers insisted that the board be continued, and it was not until 1923 that they abandoned the hope of having it carried on through the dominion government continuing the wheat board. There was certain legislation, but we will ignore it. In 1923 the farmers decided, in consequence of this, to form a wheat pool. That is to say, they would get as many farmers as they could to sign a contract to market their wheat through one organization. The wheat board had handled all the wheat in 1919-20, and the farmers, as I say, formed this organization, stipulating that if they did not get fifty per cent of all the acreage of the province signed into the pool they would not operate.

That briefly is the history of the business showing where the wheat pools came into the picture in the handling of grain.

In connection with grain handled in bulk -- that is, the grain is not bagged -- there is a very elaborate government system of inspection, weighing and grading. The government inspect the wheat and weigh it into the terminals and then inspect the wheat out of the terminals, issuing certificates for it, and our wheat is sold on a final certificate all over the world. It is an excellent system of handling wheat, but it naturally involves the fact that no one's wheat can be kept identified because it goes in bulk into the terminals and all that is undertaken with respect to it is to give a man wheat of the same grade and quantity as the government declare his wheat was.

Roughly, that is the background of the wheat situation

Into that picture in 1923 came the three wheat pools selling wheat. They had a five-year contract which expired with the 1927 crop and another five-year contract which would expire five years later. In 1931, as you will find from the briefs that are being submitted, they released their growers from the obligation of delivering more wheat under that contract. They were compelled by the contract to deliver all wheat and from that time on that type of pool has not operated. That is the main point. Any pools that have operated from that time until now have been voluntary. . . A farmer would come forward and volunteer to deliver wheat and he was not under a binding contract. I hope I have not confused you with the explanation I have given.

JOHN H. WESSON,

a witness being called and duly
sworn, testified as follows:

BY MR. MILLIKEN:

Q. From the time you came to Canada in 1907, until you became president of Saskatchewan Cooperative Producers Limited in 1937 -- that was the time, was it not?

A. Yes; 1937.

Q. You had farmed where? A. Maidstone, Saskatchewan.

Q. You have been a director of Saskatchewan Cooperative Producers Limited ever since the organization began to do business in 1924? A. That is right.

Q. Elected each year as a director? A. Yes.

Q. Since 1937 you have been president of the organization?
A. Yes.

Q. You were also for a number of years prior to 1937 on the executive? A. Yes.

Q. How many years? A. From 1926.

Q. The brief you are going to read was prepared by the

officials of your organization. Was it submitted to anyone for approval? A. The full board of directors.

Q. And they approved of the brief you are submitting? A. Yes.

Q. Will you please read it? A. The brief is as follows:

"The Saskatchewan Cooperative Producers Limited is an association of more than 100,000 farmers interested in the cooperative marketing of grain and livestock in Saskatchewan.

"There are a number of subsidiaries which together with the parent association are usually referred to as the pool organization. The subsidiaries are:

"Saskatchewan Pool Elevators Limited,
Saskatchewan Pool Terminals Limited
Saskatchewan Wheat Pool Construction
Company Limited
Modern Press Limited
Saskatchewan Cooperative Livestock
Producers Limited

"Originally the name of the parent association was Saskatchewan Cooperative Wheat Producers Limited. On April 1, 1944, by acts of the Saskatchewan Legislature, the name was changed to Saskatchewan cooperative Producers Limited, and provision was made for the operation of Saskatchewan Cooperative Livestock Producers Limited as a subsidiary of the parent association.

"For purposes of simplification, the legal title of the parent association is not used in this submission. Instead the terms "Saskatchewan Wheat Pool" and "Wheat Pool" are used to designate the pool organization.

"There are approximately 1,200 shipping points in Saskatchewan. Of this number 1,125 are served by elevators and the remaining 75 are served by loading platforms.

"The pool organization owns and operates 1,129 country

elevators in Saskatchewan located at 1,046 shipping points. At 83 shipping points the organization operates two elevators and at 188 points operates one or more elevators without competition. There are only 79 points in the province served by elevator facilities where there is no pool elevator.

"Attached to this submission is a map of Saskatchewan showing the location of pool elevators. Each red symbol represents a pool elevator."

MR. MILLIKEN: I believe that is true only of half a dozen copies with which the commission was presented. No one else has that exhibit attached.

THE CHAIRMAN: Are these elevators all on railway lines?

THE WITNESS: No. We have two off the railway lines. One is in the extreme northwest at Good Soil and another at a place the name of which I have forgotten for the moment.

THE CHAIRMAN: What transportation facilities are there?

THE WITNESS: Truck to St. Walburg and Meadow Lake.

Submission of Saskatchewan Cooperative Producers Limited and its subsidiaries to Commission on Taxation of Co-operatives - 1945

"(1) Western Canada, and particularly that semi-arid portion of Saskatchewan that lies within the Palliser Triangle, has long been recognized as the area in which is grown the world's best bread wheat. Because of the semi-arid climate, wheat growing is a very hazardous undertaking.

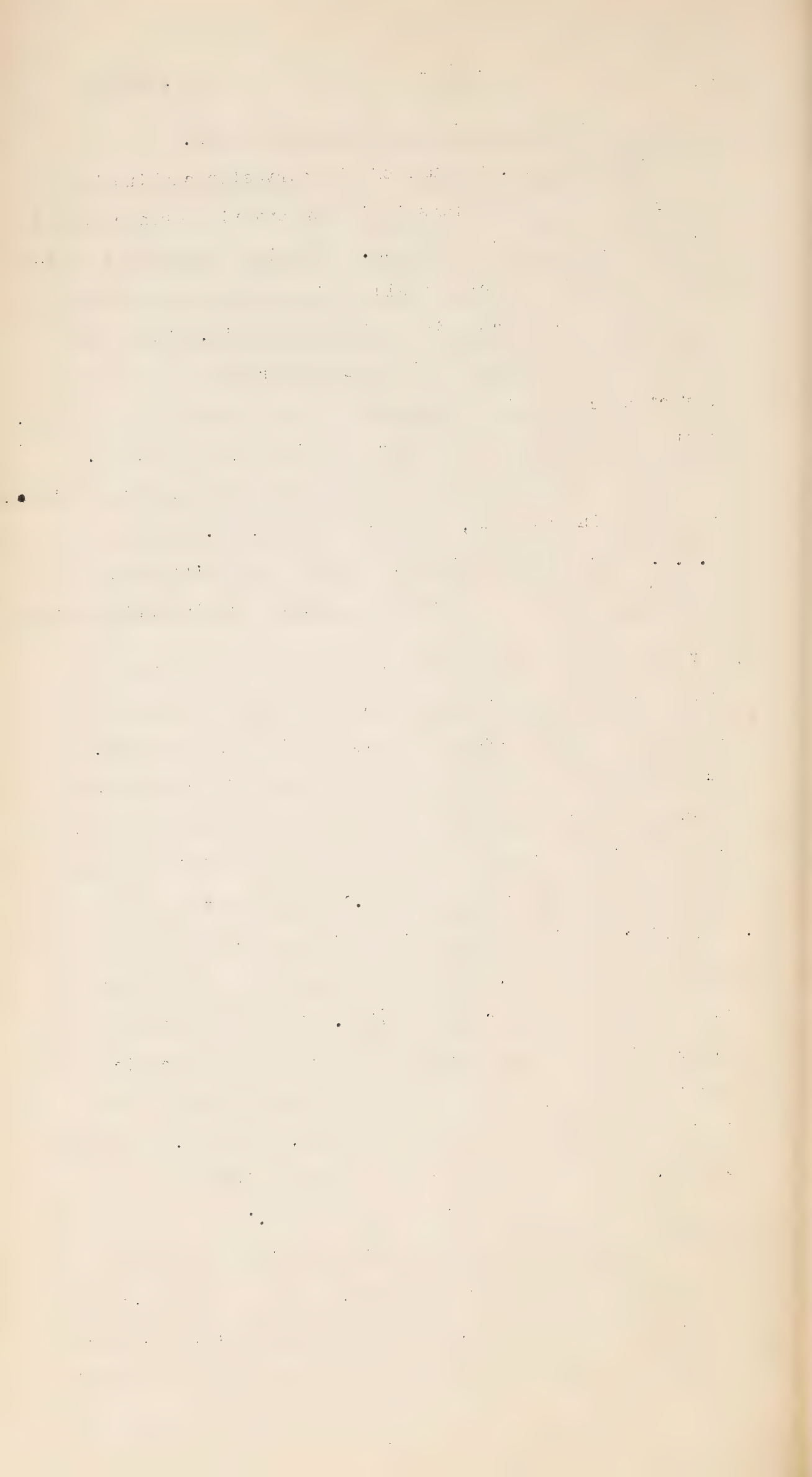
"The price the grower receives for the wheat he sells is of vital importance to him. Any saving in the cost of handling and marketing is directly reflected in the final price received. Therefore constant effort on the part of the farmer has been directed toward

reducing both production and marketing costs.

"For example, the use of the harvester combine has saved millions of dollars in labour and time when compared with older harvesting methods. Likewise storage and handling facilities erected beside rail and water have been essential to the economic handling of grain. Ownership of the combine by the individual farmer has had the same effect as collective ownership of grain handling facilities. Both have increased the return received by the farmer.

"(2) The Report of the Royal Grain Inquiry Commission appointed in May 1923, of which the Hon. Mr. Justice W.F.A. Turgeon was chairman, points out that "between the year 1897 and the outbreak of the great war in 1914 thirteen investigations into various departments of the grain trade were held by royal commissions, in some cases appointed by federal and in other cases by provincial authority. All of these investigations were prompted by complaints emanating from the producers of grain and they all resulted in the bringing about of at least some beneficial changes in the conditions complained of." The report points out that since 1914 no general investigation of the grain trade had been held, while the trade itself had expanded and developed with great rapidity. 'In the meantime the complaints of the producers have become more specific and their demands for better conditions more and more insistent and more and more extensive, reaching, as they do now, far beyond the local questions which at one time engaged their attention in each province.'

"Largely because of conditions similar to those referred to in the Turgeon Report, about the year 1910 the governments of Manitoba, Saskatchewan and Alberta undertook to encourage the formation and operation of farmers'



cooperative elevator companies, in an effort to eliminate some of the unsatisfactory conditions existing in the grain business.

Saskatchewan Cooperative Elevator Company Limited

(3) In 1911 the Saskatchewan Cooperative Elevator Company Limited was incorporated by act of the Saskatchewan Legislature. (See Chapter 39, S. of S., 1911.)

"This company was given authority to form local associations at grain shipping points when the members had subscribed sufficient local capital to pay for an elevator and had paid up fifteen per cent of the total subscribed. The government agreed to furnish the other eighty-five per cent of the capital by way of a loan.

"This new company grew and prospered financially until, by 1926, it owned and operated approximately 450 country elevators in Saskatchewan, two terminal elevators at Port Arthur, Ontario, and a transfer elevator at Buffalo, New York. In that year the Saskatchewan Cooperative Elevator Company disposed of its entire holdings to the Saskatchewan Wheat Pool.

"(4) The Saskatchewan Cooperative Elevator Company operated on a basis entirely different to the principle adopted by the Saskatchewan Wheat Pool. Any operating surplus of the Saskatchewan Cooperative Elevator Company was retained within the Company, or distributed to the shareholders as dividends on share capital on the basis of the number of shares held rather than on the volume of grain delivered by the shareholder. The Saskatchewan Wheat Pool, on the other hand, distributes the last portion of its savings back to its member patrons on the basis of the volume of grain delivered as a refund of excess handling charges. (Up to July 31, 1944, in excess of

\$11,000,000 had been paid back to growers in this way.)

"Although the Saskatchewan Cooperative Elevator Company had authority in its charter to distribute surplus earnings back to the growers in relation to the volume of business rather than on the basis of share capital it did not avail itself of that power.

"(5) Dissatisfaction developed among the farmer shareholders of the Saskatchewan Cooperative Elevator Company, partly because the shareholders who delivered grain to the company's facilities received no greater reward than those who did not, and partly because the farmers generally came to the conclusion that many of their marketing difficulties centred around the speculative system which was inherent in the futures market of the Winnipeg Grain Exchange, an institution which was accepted by the Saskatchewan Cooperative Elevator Company as a part of the necessary machinery of marketing grain.

"In spite of the fact that the Saskatchewan Cooperative Elevator Company was an outstanding success financially, it did not meet the needs of the farmers of Saskatchewan. The farmers did not want just another elevator company, they wanted an elevator system in which the fruits of cooperative marketing would be reflected in the returns they received for the products of their farms.

Organization of Wheat Pool

"(6) The successful operation of the Canadian Wheat Board, which marketed the 1919 wheat crop without the aid of the futures market, convinced farmers generally that the futures market profited the speculator more than the farmer. Therefore the organized farmers of the three prairie provinces made an insistent demand for

continuance of the wheat board. It was not until 1923 that they gave up hope of government action.

"The next move of the organized farmers was to create a cooperative substitute by setting up in each of the three prairie provinces grain marketing organizations of their own, known as wheat pools.

"Since the new organization did not have the compulsory powers of the Canadian Wheat Board, it was --" The word "considered" should be added after "was".

"--it was considered necessary to have deliveries under contract to ensure a sufficient volume of grain. The minimum objective of the cooperative, therefore, was to secure contracts from farmers, covering at least fifty per cent of the acreage seeded to wheat, under which they agreed to deliver all the marketable wheat which they owned, produced or acquired for a specified period of years.

"(7) In August, 1923, the Saskatchewan Wheat Pool was incorporated. It was organized as a cooperative association under the provisions of the Saskatchewan Companies Act, there being no other way at that time by which it could be organized. Its capital stock was set at 100,000 shares of a par value of \$1 each. Later its capital stock was increased to 200,000 shares.

"The pool was forbidden by its memorandum of association to pay dividends on its capital stock and was set up with the avowed intention of operating on a non-profit basis. Its articles of association, or by-laws, provided that no one could hold more than one share and anyone could become a shareholder provided he was concerned in the production of grain in the province of Saskatchewan.

"The association's powers included the right to market grain and to operate and own warehousing facilities for grain.

"(8) The objective of the wheat pools was set out clearly in the charter of their combined selling agency;

"(a) To serve as a selling agency on a non-profit basis for the Alberta Cooperative Wheat Producers Limited, Saskatchewan Cooperative Wheat Producers Limited and Manitoba Cooperative Wheat Producers Limited, and each of them, and their, and each of their shareholders and their members.

"(b) To be an agricultural organization instituted for the purpose of mutual help; to serve as the central marketing association for the corporations and persons mentioned in section (a) hereof but for no others; to improve methods and reduce costs of marketing grain; to reduce speculation, manipulation and waste and all unnecessary transactions in such marketing; to increase consumption, build up new markets and develop new uses for grain; to market same directly and with regularity so as to furnish it economically to the users thereof"

MR. MILLIKEN: So that there will be no misunderstanding, may I point this out. Paragraph (b) says they were to market grain for the three organizations and no others. Some years later that was amended to enable them to market, and they did market, grain for a like wheat pool in the province of Ontario.

"Undoubtedly one of the main purposes of the new organization was to realize a greater return to the farmer from the sale of his grain. This, it was believed, could be brought about partly by savings which could be effected through volume handled, and partly by the advantage which would be gained from cooperative marketing as contrasted with growers competing with each other in the market.

"The large percentage of western Canada's wheat crop has always had to find an export market.

"In the years prior to 1941 the farmer delivered the greater part of his grain during a three months period following harvest, while the buyers spread their purchases

throughout the twelve months of the year. The farmers believed that an organization, marketing their wheat cooperatively, could take delivery in the normal way and could spread its sales throughout the entire crop season to the advantage of all. In these early years the question of income tax was not a factor in the economic welfare of the average farmer.

"(9) In March, 1924, an act of the Saskatchewan Legislature was passed confirming the earlier incorporation. (See Chapter 66, S. of S., 1924)

"From the inception of the organization, until the year 1932, no application for a share was accepted unless the applicant also signed an agreement to market all his wheat through the agency of the association. This agreement provided for the association marketing such wheat as agent for the grower.

"As already indicated, the agreement was to be of no effect until one-half of the wheat acreage of Saskatchewan was under contract.

"The agreement also made provision for the association making an advance to the grower at the time of delivery, and for paying the balance of the price realized from the sale of the grain delivered to it in any one year as soon as that year's crop had all been sold. Every grower delivering grain of the same grade was to receive the same price. In other words, the proceeds of the grain were pooled.

"Provision was also made in the agreement for deducting from the sale price of grain the actual cost of operation and two sums known as elevator deductions and commercial reserve deductions.

"(10) At the time the Saskatchewan Wheat Pool started business in 1924 it has approximately 47,000 members.

By the end of the first contract period, July 31, 1928, shares had been allotted to 92,866 members. At the present time the organization has a membership in excess of 100,000.

"(11) The shareholders of the association, being more than 100,000 in number, cannot meet in a body to discuss the business of the association.

"Provision is made in the act of incorporation and the articles of association for an annual election of shareholders' representatives, to be known as delegates. (See Act of Incorporation, sec. 4, sub-sec. pp and qq, and chap. 66. S. of S., 1924.) (See Article of Association 61 to 70.)

"The delegates to all intents and purposes are the shareholders for the purpose of general meetings of the association. (See Act of Incorporation 4 pp. qq.)

"For purposes of administration of the Pool organization, the province has been divided into 16 districts and each idstrict is divided into ten sub-districts.

"Note: Due to a shift of population, development of new areas and other causes, five districts have been revised and now contain eleven sub-districts."

That is in the north part of the province.

"Annually the shareholders residing in each sub-district exer ise the right to nominate candidates from among their members for the purpose of electing a delegate. The articles provide that any six pool members within a subdistrict may nominate a candidate for the office of delegate by signing a nomination form which is readily available. If more than one candidate is nominated an election is held.

"Ballots are mailed out to all shareholders in the sub-districts in which elections are held. The ballots

are marked by the shareholders and returned by mail to a returning officer who is not connected with the organization.

"Delegates elected hold office for a period of twelve months.

"Following the election, the ten or eleven delegates elected for each district hold a district meeting and elect one of their number as director for their district. The director holds office for one year.

"It should be noted that a wheat pool director must first of all be elected as a delegate by the growers in the sub-district in which he resides. Thereafter he must be elected by a majority of the other delegates in the district in which his sub-district is located. This applies to the president and vice-president of the organization as well as to the other directors.

"Since directors are elected for only one year at a time, this method of election guarantees that control of the association at all times is in the hands of the members.

"(12). The 165 delegates, during their term of office, perform all the customary duties of shareholders by attending and voting at the annual or any other general meeting of the association. They also meet in district meetings whenever occasion warrants. To all such annual and district meetings their expenses are paid, as well as a per diem allowance for the time so spent.

"By making it possible for the shareholders to elect representatives, and in turn by providing the funds to enable those representatives to be present at all general meetings, the association has provided the machinery by which control of the organization by the entire shareholder

body is a reality.

"(13) In addition to allotting a \$1 share to each shareholder, the wheat pool placed to his credit the full amount deducted from the proceeds of his grain for elevator and commercial reserve deductions. (See Paragraphs 7, 9 and 15.)

"As a safeguard to keeping the deductions in the hands of members, the company had an amendment passed to its act of incorporation in the year 1929 which gave it absolute control over their transfer. (See Chap. 83, S. of S., 1928-1929.) In accordance with the authority given to the company by this amendment, a resolution has been passed to the effect that no transfer of any deductions will be recognized unless such transfer is to another shareholder of the company. In this way it is impossible for the interests of shareholders in the association or its subsidiaries to get into the hands of outsiders.

"(14) As a result of the disastrous drop in the price of wheat in 1930, following the stock market crash of 1929, the growers found it impossible to deliver wheat and accept the small initial payment which the pool could pay by reason of the low market price. In the case of some low grades of wheat, the market price was barely sufficient to pay the freight and handling charges on these grades. Hence, in September, 1931, the association released all its members from their obligation to deliver their grain to be sold on a pooling basis. Instead it undertook to accept wheat delivered voluntarily to be marketed under a pooling system. It has continued to follow this policy ever since except during years that the Canadian Wheat Board has been performing that function."

MR. MILLIKEN: You will note, Mr. Chairman, that the two last words in that sentence "in existence" has been deleted

and the words "performing that function" substituted for then. It might be more satisfactory for your commission if we were to explain what we mean by saying "except during years that the Canadian wheat board has been performing that function." The wheat board was set up in 1935 and is still handling grain but in 1939 it was not allowed to take more than 5,000 bushels from any one grower. In 1939 a voluntary pool was set up, and that is why the words here have had to be changed. In 1939 there was some voluntary pooling of wheat done by Mr. Wesson's organization and some other organizations outside the wheat pool.

THE WITNESS: The brief continues:

"Saskatchewan Pool Elevators Limited

"(15) In order to handle its members' grain the association was obliged to make arrangements with all existing elevator companies. Its experience in this connection resulted in a determination on the part of the growers to own and operate their own elevator facilities. This was done in the following manner:

"As we have already noted (paragraph 9), under the terms of the agency agreement, whereby the grower appointed the association his agent for the marketing of his wheat, provision was made for the association to deduct two cents per bushel from the sale of all wheat delivered to it. This money was specifically earmarked by the terms of the agreement for the purpose of acquiring grain elevator facilities, and deductions of approximately \$12,188,000 were withheld from the proceeds of the grain delivered by its shareholders in the crop years 1924 to 1928 both inclusive.

'By the agency agreement the money might be used to acquire grain elevator facilities which could be operated

as a department of the association, or it could be used to set up an elevator company as a separate legal entity. The association chose the latter method and in February, 1925, an elevator company, known as Saskatchewan Pool Elevators Limited, was incorporated under the provisions of the Saskatchewan Companies Act. This company originally had an authorized capital of 10,000 shares of \$10 each, but this was increased from time to time until it reached 1,500,000 shares.

"(16) The Elevator Company, while incorporated under the Company law of Saskatchewan, was always intended to be a non-profit organization. Page 5 of the first annual report of the directors, 1925, reads in part as follows:

"It is the opinion of the Board that these elevators should be operated on a non-profit basis and the necessary arrangements are under consideration at the present time."

Also page 9 of the second annual report of the directors, 1926, reads in part as follows:

"It was not the intention, when incorporating a subsidiary company for the purpose of operating elevators for the pool, to modify in any way the non-profit principle upon which the pool was organized. Owing to the necessity of operating on a fixed tariff in order to maintain a basis for costs, comparison and control, surpluses in the form of excess charges are unavoidable."

"(17) The total amount of the elevator deductions, to which reference has already been made, was invested in the stock of Saskatchewan Pool Elevators Limited.

"All of the shares in the subsidiary, with the exception of sixteen qualifying shares in the name of the directors of the wheat pool, are held by the parent association. Thus the ostensible shareholders of the elevator Company are the sixteen directors of the wheat pool and the wheat pool itself. In reality the shares

of the elevator Company are the property of those members of the wheat pool who have an interest in the elevator deductions. The wheat pool has always treated this investment as a trust held on behalf of its shareholder members.

"The sixteen directors of the wheat pool are also the directors of the elevator company, and provision is made that whenever a director of the parent association retires from office the share in the subsidiary which he holds in trust passes to his successor.

As the directors of the wheat pool are elected by the individual pool members, by a method which has already been referred to (paragraph 11), and since the directors of the wheat pool are also the directors of the elevator company, the control of pool elevators at all times is in the hands of the members of the wheat pool.

"(18) From the inception of Saskatchewan Pool Elevators Limited the association was obliged, by the terms of the Canada Grain Act, to operate its elevators as public elevators if they were situated at single elevator points. This meant that the association had to accept any grain offered to it at such points without discrimination.

"Due to certain difficulties contingent upon the operation of elevators, some as private and others as public, the association adopted the course of operating its entire system as public elevators. Therefore it had to accept, without discrimination, grain offered to it from both members and non-members at every elevator. In spite of this less than ten per cent of its total business is done with non-members.

"(19) The Elevator Company commenced operations in September, 1925, on the announced policy of operating on a

non-profit basis, - a policy from which it has never varied. It undertook to do so by making a fixed charge for the services rendered at the time of delivery, and by refunding any surplus after the close of the fiscal year.

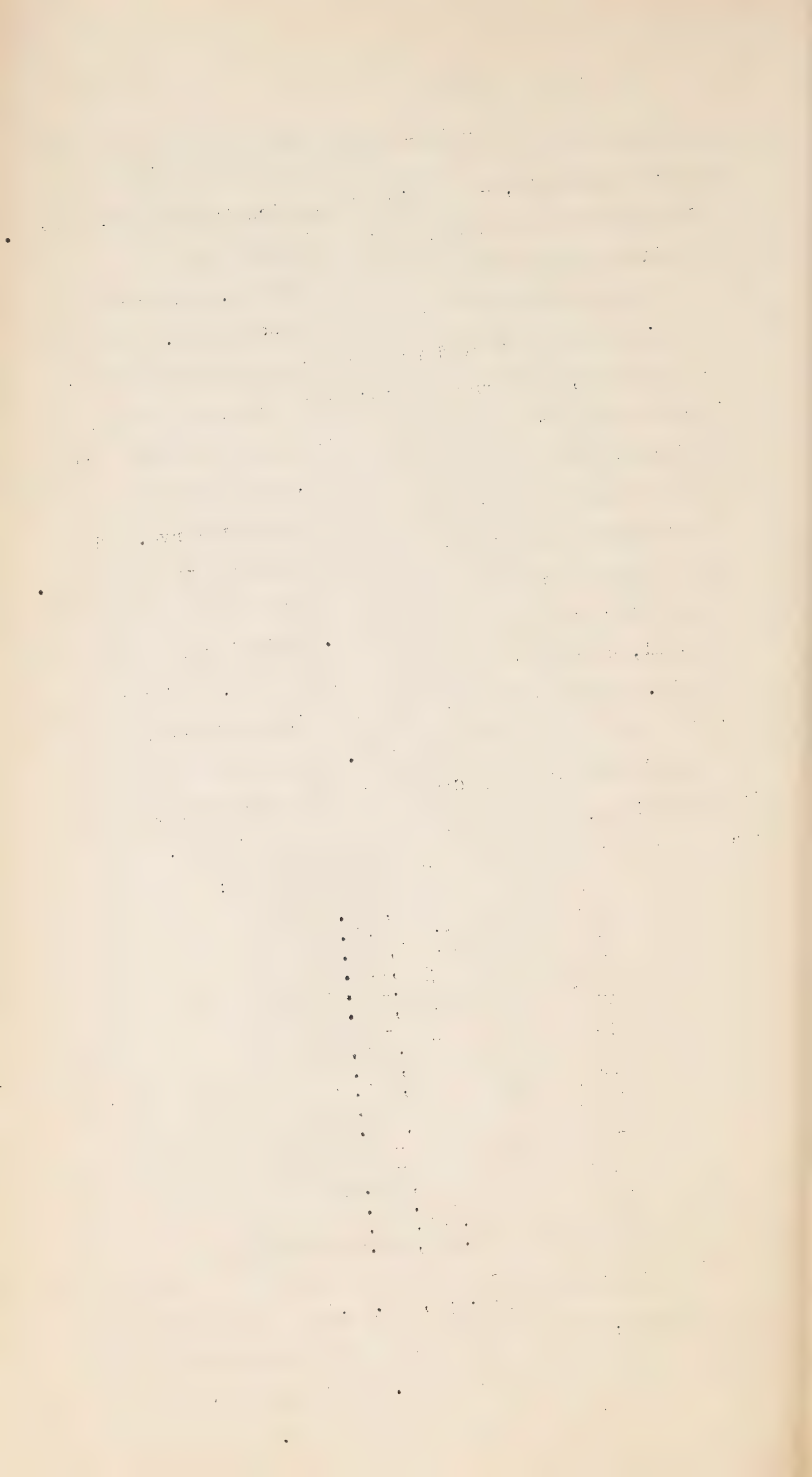
"There was deducted from the gross returns the cost of operation, an amount sufficient to enable the wheat pool to pay six per cent interest to its members from whom it had received the elevator deductions, and also such sum as the directors might deem requisite as a reserve. The balance was to be paid by way of a refund of excess charges. Interest was paid on the elevator deductions at the rate of six per cent up to the year 1930. Beginning with the year 1931, up to and including the year 1942, no interest was paid. For the years 1943 and 1944 interest has been declared at the rate of 3 per cent.

"(20) The Elevator Company in each and every year of its operations, when surpluses have been available, has declared a refund of excess charges as follows:

1926	\$476,614.09
1927	1,372,537.83
1928	1,430,791.98
1929	985,990.37
1930	746,118.10
1931	552,521.60
1932	-
1933	714,030.19
1934	348,153.21
1935	171,090.20
1936	152,176.27
1937	179,645.46
1938	-
1939	-
1940	500,000.00
1941	900,000.00
1942	1,030,000.00
1943	<u>1,800,000.00</u>

Total refunds declared
\$11,359,669.30."

THE WITNESS: May I stop reading for a moment to add something here? This deals with 1943. It is now 1945 and the 1944 year ended at the end of July last. Our



surplus earnings, after paying three per cent interest for distribution, amounted -- I have given the approximate figure -- to \$5,877,000. It represented an estimated allocation, on the basis of estimated bushels delivered by members against non-pools, of four and three-quarter cents a bushel on wheat and flax and four and one-quarter for oats, barley and rye, and we are now in process of allocating this amount on everything to each member on the basis of bushels delivered, subject to this whole question of income tax being settled.

MR. MILLIKEN: You are referring to the year ended July, 1944?

THE WITNESS: Yes. I want to put that in the record because we were not in a position, when this was drafted, to deal with the question.

"(21) Refunds of excess charges are paid to members only, and, with the exception of the years 1932 to 1938, were distributed on the basis of the volume of business each member had done with the company during the previous twelve months.

"The surplus for the years 1932 to 1938 was distributed on the basis of the volume of business done for that period rather than for each twelve months' period.

"These refunds, being in the nature of a bonus, the company paid them for a number of years without any special provision in either its memorandum or article of association authorizing it to do so. A question arose as to whether or not it should have in its articles of association authority to make such distribution, and accordingly in November, 1931, the company inserted in its articles of association the following:

"Notwithstanding anything contained in this article, any part of the profits or surplus earnings of the company may be paid or credited to the members of the company, its patrons, classes of its patrons, or such members of Saskatchewan Cooperative Wheat producers Limited as deliver grain to the company in proportion to the amount of grain delivered by any such group or groups to the company during such a period of time as the company may from time to time determine. Provided, for the purposes of this section, grain handled by different methods may be placed in separate classes, and each class may receive a different amount of such profits or surplus earnings, which shall be divided among those who have delivered grain of that class as above provided.'

"(22) In making these payments the elevator company has always treated them as a refund of excess charges. Accordingly different amounts have been paid for different grains. For example, a different refund has been paid to those delivering wheat compared to those delivering oats. Also a different amount has been paid to those who delivered grain to the company's terminals only as compared to those who used both the country and terminal facilities. The amount refunded has been related to the surplus arising from the various grains handled during the period in question and to the different methods of handling them.

"It has been noted that the elevator deductions were invested in the stock of Saskatchewan Pool Elevators Limited in the name of the Wheat Pool.

"In order to keep the ownership of both the elevator and commercial reserve deductions in the control of active

members, the elevator company for years past paid only part of the refund of excess charges in cash. The remainder has been used to purchase elevator and commercial reserve deductions which have been placed to the credit of the patron member in lieu of cash.

"In acquiring deductions for this purpose, the elevator company has been purchasing them from the following holders thereof:

- "(a) Estates of deceased members;
- "(b) Members who have ceased farming or have become totally disabled; and
- "(c) Members who are 65 years of age or over.

"In every case, if the member selling has ceased to farm and has no further interest in the marketing of grain, he has been urged to dispose of his \$1 share that it may be transferred to a new member. Approximately one-sixth of the total deductions has thus been transferred to the hands of active members.

"(23) The policy of making a fixed charge for services rendered at the time of delivery, and refunding any surplus after the close of the fiscal year, has been followed consistently by the elevator company.

"At the same time the company has been an important factor in securing reductions in handling and storage charges. For example, under the original contract with the line elevator companies for the handling of pool wheat, the handling charge for street wheat was slightly over five cents per bushel for the three top grades and slightly over six cents per bushel on all lower grades.

"Largely at the insistence of this organization in cooperation with similar organizations in Manitoba and Alberta, there has been a progressive lowering of

handling charges during the intervening period. For the last two completed grain years all street wheat of all grades has been handled for the Canadian Wheat Board at a flat charge of three cents per bushel.

"Ten years ago the regular country elevator storage charge was one-thirtieth of a cent per bushel per day. For the last completed crop season the storage charge collected from the wheat board was at the rate of one-sixtieth of a cent per bushel per day, or exactly one-half.

"This year, as a result of favourable anticipated handlings, the company has decreased the handling charges by a further two cents per bushel on all grains, with the result that the grower is receiving two cents per bushel more at the time of delivery.

"Present prospects indicate that it will be possible for the directors to declare a refund of excess charges at the end of the current crop year.

"It may be found possible, from time to time, to operate on even lower charges, depending upon the volume of grain to be handled and other factors.

"It is within the authority of the association itself to decide whether savings affected should be paid in the form of a refund of an excess charge after the close of the fiscal year, or whether they should, in whole or in part, be paid at the time of delivery in the form of an enhanced price as a result of lower handling charges.

"(24) Prior to 1931 the association's elevators accepted grain from members and non-members for storage, cleaning and shipping and at all times made its regular customary charges for such services.

"With the release of pool members from their contracts in 1931 (paragraph 14), the elevator company, in addition

to performing the above services, adopted the policy of buying grain from pool members and others who made delivery to its country elevators, and who desired to sell rather than store or pool their grain. It agreed to sell any grain stored with it on the customary grain commission basis. For the past few years it has acted as an agent of the Canadian Wheat Board to accept delivery of wheat and flax on its behalf, and has also operated a shipping and export department through which it has entered into the business of shipping grain or selling for export.

"(25) Deliveries of grain to Pool Elevators reached an all-time high in the last crop season 1943-44, when 140,930,618 bushels of grain were handled by the country elevator system. Since the inception of the organization in 1924 Saskatchewan Pool Elevators Limited has handled 1,539,501,325 bushels of grain.

"It may be worth noting that last year Saskatchewan pool country elevators handled 24.95 per cent of all the grain delivered in western Canada. This represents 42.64 per cent of all Saskatchewan deliveries."

THE CHAIRMAN: Does the term "last year" refer to 1943?

THE WITNESS: Yes, 1943-44. Our grain year starts on the first of August, so that when I said last year I meant the year that started on August 1, 1943 and ended July 31, 1944.

"In spite of this large handling, many wheat pool members were debarred from using their own elevator facilities by reason of the control of the distribution of railway cars in effect last year.

"(26) Earlier in this submission a reference was made to the statement that in the seventeen-year period 1897 to 1914, thirteen investigations into various departments of the grain trade were held by royal commissions, all of them prompted by complaints emanating from the producers of grain.

"The appointment of the Turgeon Commission in 1923 was made at a time when western farmers, thoroughly dissatisfied with conditions surrounding the marketing of their grain, were contemplating the organization of large scale cooperative marketing organizations as a method of solving their problems.

"In this connection, it should be noted that the Canada Grain Act was first passed in response to a widespread request from western farmers for legislation to safeguard their interests in the marketing of their grain.

"As the Turgeon Commission report pointed out, all of the thirteen inquiries referred to resulted in the bringing about of at least some beneficial changes in the conditions complained of.

"In an earlier period the work of the Board of Grain Commissioners, appointed to administer the Canada Grain Act involved dealing with numerous complaints from farmers of what they regarded as unfair treatment by grain handling companies. Complaints of this type are now comparatively rare. Saskatchewan farmers are now generally satisfied with the treatment they receive because they themselves own and control a grain handling system sufficiently strong to establish business practices which must be followed by private companies in the grain trade if they wish to stay in business.

"Saskatchewan Pool Terminals Limited

"(27) Saskatchewan Pool Terminals Limited was organized to operate the terminal elevator facilities of Saskatchewan Pool Elevators Limited located at the head of the lakes under an agreement whereby the revenue, after deducting all necessary expenses, belongs to Saskatchewan Pool Elevators Limited.

"This company was incorporated under the Dominion Companies Act in March, 1927, and has an authorized capital of 500 shares of a par value of \$100 each. There are issued, and fully paid up, 116 shares, 100 of which are held in the name of the parent company and sixteen allocated to the directors of the Saskatchewan Wheat Pool as qualifying shares to enable them to act as directors of the company. The same arrangement exists with respect to the transfer of these shares, in the event of a change in the Board of Directors of the parent company, as with Saskatchewan Pool Elevators Limited.

"At the time the Terminal Company was incorporated, Saskatchewan Pool Elevators Limited was not a member of the Winnipeg Grain Exchange. The Terminal Company was formed and registered under a membership in the Grain Exchange in order that the terminal elevators might be regular under the by-laws of the exchange. This was necessary in order that warehouse receipts issued to cover grain unloaded in pool terminals would be deliverable against sales between members of the exchange.

"Saskatchewan Wheat Pool Construction Company Limited

"(28) The Saskatchewan Wheat Pool Construction Company Limited functions as the construction and repair department of pool elevators and all transactions in connection with construction and repairs are included in the

accounts of pool elevators. It was organized to obtain discounts and effect savings on the purchase of repairs and building supplies.

"This company was incorporated under the Saskatchewan Companies Act in February, 1929, and has an authorized capital of \$20,000 divided into 2,000 shares of \$10 each, of which sixteen shares have been issued to the directors of the wheat pool. These sixteen shares are held in the same way as the qualifying shares in the other subsidiary organizations.

"(29) In addition to its grain handling subsidiaries, there are two other pool subsidiaries.

"(a) Modern Press Limited'

"This company was incorporated under the Companies Act of Saskatchewan in June, 1931. It had an authorized capital stock of 1,000 shares of \$100 each. Each director of the wheat pool had allotted to him one share which was paid for from the commercial reserve fund of the pool. The balance of the capital stock (984 shares) was allotted to the pool and was also paid for from the commercial reserve fund. Thus the shareholders of Modern Press Limited are the sixteen directors of the wheat pool and the pool itself.

"Modern Press Limited has a board of sixteen directors, hence the individual shareholders are also the directors, and as in the case of the other subsidiaries, when a director is changed in the wheat pool a like change takes place in the shareholders and directors of Modern Press Limited.

"Regarding the incorporation of this company, it should be pointed out that in the initial stages of the organization of the Saskatchewan Wheat Pool the daily press

movement. In order to provide authentic information, the association made arrangements to use the columns of a new farm paper launched in the city of Saskatoon about the time the pool was being organized.

"From time to time the association advanced money by way of loans to the proprietors of the paper until the total loan became so large that the entire plant had to be taken over. In this way the association became not only the owner of a weekly farm paper but also of a job printing plant. This plant, in addition to doing the job printing of the pool organization and other cooperatives, also does job printing for the public. Prior to the year ended July 31, 1943, the publishing company always operated at a loss.

"(b) Saskatchewan Cooperative Livestock Producers Limited

"This company was incorporated in April, 1926, under the provisions of the Cooperative Marketing Associations Act of Saskatchewan. This incorporation was confirmed by act of the Saskatchewan legislature in 1929.

(See chapter 84, S. of S., 1929.)

"The company was incorporated as an agency to market the livestock of producers in the province of Saskatchewan on a cooperative basis. It had no capital stock and operated on a membership basis as a non-profit organization.

"The act of incorporation provided that no dividend should be declared or paid to any member of the association and by an amendment to the act in 1944 it was given authority to distribute accumulated surpluses in proportion to the volume of business done by its members.

"In the year 1944 the charter of the company was taken over by Saskatchewan Cooperative Producers Limited.

An amendment was secured to the Act of Incorporation

doing away with memberships and making provision for twenty shares of stock of the par value of \$1 each. (See Chap. 104 S. of S., 1944.) Sixteen \$1 shares were allocated to the sixteen directors of Saskatchewan Cooperative Producers Limited, who also became the directors of the subsidiary company. Thus the subsidiary company is under the direct control of the directors of the wheat pool and they in turn, as we have already noted, are directly controlled in annual election by the shareholders of the pool.

"The livestock subsidiary when it distributes any surplus must do so on a patronage dividend basis."

MR. MILLIKEN: This is the only subsidiary in respect of which we have not filed the memorandum of association and articles. As a matter of fact they are under revision at the present time but if the commission wishes to have them we will give the articles and the memorandum. They are the only ones that we have not filed.

THE CHAIRMAN: I think we should have the complete picture.

"Cooperative Industrial Expansion

(30) The Wheat Pool is now committed to a programme of cooperative industrial expansion in Saskatchewan, involving the industrial utilization of grain and including for immediate construction a vegetable oil crushing plant. It has not yet been decided whether this plant will be operated as a department of the pool or set up as a distinct legal entity in exactly the same manner as the elevator company and other subsidiaries have been set up. In any event the capital for this development will be obtained either from the commercial reserve fund already referred to or will be secured by way of further investment from pool members."

MR. MILLIKEN: You have read that the capital for the subsidiary pool elevators was obtained from elevator deductions, and you have said that the capital for the Modern Press came from commercial reserve. Where did the capital for all other subsidiaries come from?

THE WITNESS: From the commercial reserve.

MR. MILLIKEN: Mr. Howard reminds me that we have an interest in another subsidiary that we have just taken over as a result of going into the Canadian Livestock Western Limited. That is the one you referred to, Mr. Howard. That was filed in Winnipeg with two other briefs. We have some interest in Canadian Livestock Western. I cannot tell you what it is because we are just getting it taken over. Is it \$5,000, Mr. Wesson?

WITNESS: I am not clear on the amount of money invested in it, but it is controlled by the two livestock organizations in Saskatchewan and Manitoba. This is such a new thing that I am not conversant with the capital myself.

MR. MILLIKEN: There was a brief submitted in Winnipeg by Canadian Live Stock Limited.

THE WITNESS: C. L. C.

MR. MILLIKEN: That would be Mr. Downing. I think he submitted a brief.

THE WITNESS: Then you have all the information in his brief.

MR. MILLIKEN: At any rate, there is another small subsidiary.

THE CHAIRMAN: I do not remember that brief.

MR. MILLIKEN: I remember he was at the hearing.

MR. ARNASON: I believe the Manitoba Live Stock Pool submitted a brief.

THE WITNESS: It is really the same thing as regards

these two live stock organizations in the provinces of Manitoba and Saskatchewan, but I did not know enough about it to put it in here because it is just in the process ' of being taken over by the Saskatchewan pool.

"Interprovincial Subsidiaries

"(31) In addition to the foregoing the Saskatchewan Wheat Pool, jointly with similar organizations in Manitoba and Alberta, owns and operates three other interprovincial subsidiaries. These are Canadian Co-operative Wheat Producers Limited, Canadian Pool Agencies Limited and Pool Insurance Company. Particulars of the operation of this group of subsidiaries will be submitted and discussed at a later sitting of the commission."

"(32) In 1926, at the request of the Income Tax Department both the Saskatchewan Wheat Pool and its elevator company filed income tax returns. They claimed exemption on the ground that they were non-profit cooperative organizations.

"The department ignored the claim for exemption and assessed the pool for the year 1925, claiming the elevator and commercial reserve deductions referred to in paragraph 9, and any earnings from such moneys, were taxable income of the wheat pool.

"The commercial reserve was an authorized deduction of one per cent of the gross selling price of the grain. The association was authorized to deduct this percentage from the settlement for each member's grain, and the sums so realized could be used for any purpose of the association. Both the elevator deductions and commercial reserves were to be used by the company so long as it might consider it desirable, but upon dissolution distribution was to be made to those from whom they were deducted in proportion to their contribution.

The Saskatchewan Wheat Pool appealed against the decision of the Income Tax Department and was awarded a judgment by the Supreme Court of Canada. (Minister of National Revenue vs. Saskatchewan Co-operative Wheat Producers Limited 1930, S.C.R. 402).

"(33) At approximately the same time a producers' dairy organization, incorporated under the Co-operative Associations Act of British Columbia and known as the Fraser Valley Milk Producers, was likewise assessed. It too appealed on the ground that it was a cooperative and therefore exempt. It lost the appeal in both the Exchequer Court and Supreme Court of Canada. (Minister of National Revenue vs. Fraser Valley Milk

Producers 1929, S.C.R. 435).

"(34) As a result of this adverse decision in the case of the Fraser Valley Milk Producers, the Canadian cooperatives asked for an amendment to the Income War Tax Act clearly exempting cooperatives from its provisions. In so doing the cooperatives specifically stated they did not wish to be granted exemption for business being done with non-members.

"The Hon. C. A. Dunning, then Minister of Finance, brought in an amendment, now known as Section 4(p) to the Income War Tax Act. This amendment exempted producer cooperatives, both for member and non-member business, provided the non-member business did not exceed 20 per cent of the member business. If the percentage of non-member business exceeded this, then there was no exemption for the cooperative.

"In introducing the measure into the house, Mr. Dunning is reported to have said: 'The intention here is to exempt bona fide cooperative associations and companies from income tax.' And again 'The cooperative movement operates in a variety of ways. There are different bases of operation.' (Hansard 1930, pages 2508 and 2509).

"Mr. Dunning then went on to say that the dairymen's cooperative of the Fraser Valley, namely the Fraser Valley Milk Producers' Association, in its operations 'differs entirely from the wheat pools and cattle pools of the prairies,' and for this reason it was necessary to find some common ground upon which all these 'essential bona fide cooperative organizations' could be dealt with.

"(35) Following a widespread and well organized campaign directed against the pool organizations, the question of the liability of the pool for payment of income tax was again introduced by the Department of National Revenue in 1940.

"In 1942 the department issued an assessment for the fiscal year 1939-40, claiming that the pool no longer came within the exemption section of the Act as it did not now carry on the function of actually selling its members' grain, that function having been assumed for a number of years by the Canadian Wheat Board. The department therefore contended that any income of the Saskatchewan Wheat Pool was taxable. (The only revenue received by this organization is composed of interest derived from the investment of the commercial reserve fund.)"

That is the wheat pool itself.

"The pool has appealed this assessment and the case is at present before the department.

"It should be noted that the pool organization was advised that this was to be a test case, and that the Department of National Revenue possessed the right to go back to the year 1930 for the purpose of additional assessments.

"(36) In the case of the Elevator Company the Department of National Revenue from the beginning conceded its claim for exemption on its refund of excess charges, but claimed that any surplus placed in reserve and any interest paid on its loan capital was taxable income.

"The Elevator Company was first assessed for the year ended July 31, 1926, and paid the assessment, but with the payment sent a letter of protest in which it contended it was part of a cooperative organization and as such had no taxable income. It was likewise assessed and paid the taxes levied on it for the years ended July 31, 1927, 1928 and 1929. Its refunds of excess charges, amounting to \$4,256,040.82 for the four years in question, were allowed by the department as proper deductions before arriving at taxable income.

"When the cooperative exempting Section 4(p) became law, the Elevator Company applied for a refund of the tax paid by it for the year ended July 31, 1929, claiming the company came within the provisions of the exempting section. Its claim was admitted by the department and the tax paid for that year, in the amount of \$103,107.68, was refunded in full. The Elevator Company thereafter continued to file returns claiming exemption under the section in question.

"For the years 1930 to 1938 inclusive the Elevator Company received letters from the Inspector of Income Tax to the effect that the Elevator Company was believed to be non-assessable by reason of the exemption granted in Section 4(p). In 1940, by letter dated February 24, the Inspector of Income Tax, Regina, advised the Elevator Company that with regard to the years 1932 to 1938 inclusive its liability had been investigated and it was believed that ---"

I have changed this to give the exact quotation from the letter:

"--'it still qualified under Section 4(p) as a true co-operative. Accordingly the income is not liable to tax under the Act.'"

That is the quotation from the letter.

"In an interview with the Commissioner of Income Tax in 1941, the company was notified that in the opinion of the Justice Department the Elevator Company no longer came within the exemption of Section 4(p). Furthermore, by letter dated February 15, 1943, the Income Tax Department notified the Elevator Company that the Justice Department had given an opinion that the excess charges refund was a distribution of profits and consequently taxable. By further letter, dated

April 16, 1943, the Income Tax Commissioner advised that a cooperative which pays dividends on its share capital cannot come within the exemption granted in Section 4(p). The department also advised both the Wheat Pool and its subsidiary Elevator Company that it did not consider itself bound by any previous correspondence and therefore reserved the right to assess from the year 1930 on. The department further advised that it was taking a test case to court and that it would take the fiscal year ended July 31, 1940, for its test year. Accordingly, on June 22, 1943, an assessment for the year ended July 31, 1940, was made of the Wheat Pool and all of its subsidiaries on a consolidated basis, to which assessment a notice of appeal was filed.

"Again, on September 14, 1944, the department assessed the Wheat Pool for the year ended July 31, 1940, on an individual basis."

MR. PARKER: What do you mean by "individual"?

MR. MILLIKEN: In the first place it was a consolidated assessment, but now there is an assessment for the elevator company and the pool. If you ask Mr. Weston some questions you will find that the Pool Construction Company never has any income; Pool Terminals Company has no income; Modern Press had nothing but losses until 1944.

BY THE CHAIRMAN:

Q. Then are you making a further correction, Mr. Weston?

A. Yes, just deleting the following words after "excess charges refund", to take out the words, "and accordingly."

MR. MILLIKEN: You will see that if the words "and accordingly" are left in it would appear that the appeals were taken because the patronage dividends were not allowed. That is the reason for striking out those words, because the

appeals were taken on other grounds as well.

THE WITNESS: The brief continues:

"It also assessed Saskatchewan Pool Elevators Limited separately for the years ended July 31, 1940, and July 31, 1941. No deductions were allowed in any of these assessments for distribution of excess charges refund. Assessment appeals have been taken by both the Wheat Pool and the Elevator Company.

"It should be noted that at no time has the Justice Department or the Income Tax Department advised that the Wheat Pool and its subsidiaries were not cooperatives. What the departments have said is that they are not carrying on the type of business or not carrying on business in the particular manner required to bring a co-operative within the present exemption of Section 4(p).

"(37). It has already been noted (paragraph 15) that the Wheat Pool always possessed the authority to operate a system of elevators either as a department or as a separate legal entity. That it chose to set up a separate legal entity in no way altered or affected either its control over or method of operation of that system. Indeed, if it were to wind up its Elevator Company and proceed to operate its elevators as a department of the Wheat Pool, no change or alteration would be required either in its control or operation. It would be controlled as it now is by pool members. It would still operate at cost by the method of refunding excess charges. It would still accept for membership anyone concerned in the production of grain in the province of Saskatchewan. It would still insist no shareholder member could hold more than one share in the association. The Wheat Pool would still be as it now is an agency for marketing its members' grain. The money invested in elevators would still

be as it now is an investment on behalf of its shareholders."

That should be "shareholders who have elevator deductions," because we have some members as shareholders who at the present time have no deductions. The sentence should read, "the money invested in elevators would still be as it now is investment on behalf of its shareholders who have elevator deductions."

"On the other hand, any sum paid by way of interest on such loan capital would readily be conceded by the Income Tax Department to be a necessary cost of doing the business and would not be confused as it now is with the payment of dividends on stock. Furthermore no question would arise under Section 4(p) as to whether its elevator operations could qualify under that section merely because of the implied restrictions on subsidiaries now to be found there.

"(38) The statement is made frequently that the Saskatchewan Wheat Pool and its subsidiaries no longer operate as cooperatives.

"Ever since 1931, when the pool ceased to enforce its marketing contract, it is claimed that the Wheat Pool, and more especially its subsidiary the Elevator Company, has been carrying on business in the same manner as any other privately owned grain elevator company.

"Unfortunately no definition of what constitutes a co-operative is to be found in the statute law of Canada, nor have any of our courts ever been called upon to express an opinion on the subject.

"It has already been noted that when Mr. Dunning introduced the exemption for cooperatives in 1930 he considered the Wheat Pools cooperatives. (Paragraph 34).

"As late as 1940 parliament recognized both the Saskatchewan Wheat Pool and Saskatchewan Pool Elevators Limited as

cooperative associations. Section 3 of S.S. 2 of Chap. 50, Statutes of Canada, 1940, being an Act to incorporate Pool Insurance Company, deals with the capital stock of the company, and reads as follows:

'With the exception of the qualifying shares of the directors as provided by Section 10 hereof, no shares shall be allotted or transferred to any person other than Manitoba Pool Elevators Limited, Saskatchewan Co-operative Wheat Producers Limited, Saskatchewan Pool Elevators Limited, Alberta Wheat Pool, Alberta Pool Elevators Limited, or a wholly owned subsidiary of any one or more of the aforesaid companies or any other cooperative company incorporated as such under the laws of any province of the Dominion of Canada.'

"No definition of what constitutes a cooperative is to be found in the Industrial and Provident Societies Act under which the various British cooperatives are set up.

"In 1937 the government of the United States appointed a commission to inquire into cooperative enterprise in Europe. That commission has issued a comprehensive report on its findings and on page 19 summarizes the fundamental principles of all forms of cooperation and outlines them to be as follows:

'(1) Open membership and ownership irrespective of race, nationality, politics or religion. No one is too poor to belong to a cooperative.

'(2) Democratic control, one membership, one vote. Membership not investment gives control.

'(3) Limited returns on capital and return of gains to members through patronage refunds. Interest returns being low do not attract the speculator and patronage dividends represent return of savings.

'(4) Substantial reserves -- membership does not supply adequate capital. Therefore it must be accumulated.'

"Generally speaking these four principles are the same as those laid down by the Rochdale Pioneers in England one hundred years ago.

"It is of interest to note that this is a report of a United States commission which undoubtedly was endeavouring to set forth the principles on which European cooperatives are based.

"It is submitted that the whole structure and operation of the Saskatchewan Wheat Pool and its subsidiaries have been founded on the foregoing principles.

"It is further submitted that the cooperative characteristics of an organization are determined by the purpose for which it is created. The course of conduct of the organization is the yardstick rather than the legal framework.

"(39) The members of the Saskatchewan Wheat Pool regard their elevator system as a further means of lowering the costs of operating their farming business in exactly the same way as they regard their individual purchase of a harvester combine.

"The ownership of an elevator, being beyond the financial ability of the individual, pool members have joined together for mutual self-help in lowering the cost of marketing their grain. Their invested millions work out at an average of less than \$200 per pool member which they contributed as an investment for service. Individually, their income is increased by the saving effected by the use of modern harvesting equipment, and, in exactly the same way, their income is increased to the extent their elevator facilities enable them to secure a greater return for their products.

"Because of this our farmers do not consider they are in

competition with private elevator interests, any more than by using their own harvester combine they can be said to be competing with those owners of combines who seek custom work for profit. They do not believe the reduction in costs of operating elevators, brought about almost solely as the result of their own volume of deliveries, should be regarded as anything other than a saving which is directly reflected in the increased income of the individual member. They therefore believe that to impose an income tax on their cooperative savings, resulting from their united efforts, merely because they are united efforts, would not be in the public interest, and would constitute an unfair, unjust and inequitable basis of taxation. These savings, which after all represent part of the selling price of the farmer's production, are now subject to tax as a part of the income of the individual.

"(40) Cooperative enterprise does not limit its activities to trading. In the modern cooperative movement emphasis has always been placed on the importance of education amongst the cooperating members.

"The educational program carried on by the Saskatchewan Wheat Pool forms an important part of its functions. Its activities include:

'(a) A circulating library of non-fiction books.

(b) Travelling libraries.

(c) The organization of study groups both by itself and in cooperation with the Canadian Association for Adult Education.

(d) Practical support for the Junior Club Movement under the direction of the Extension Department of the University of Saskatchewan.

(e) Practical support of educational radio programs and the organization of listening groups for such programs as the C.B.C. Farm Radio Forum.

(f) A program of junior grain variety testing under which at least one plot containing new varieties of grain is grown and supervised by a farm boy or girl in every rural municipality in the province.

(g) Practical support for every type of cooperative activity which holds promise of improving living conditions in Saskatchewan farm homes.'

"(41) The value of this phase of cooperative enterprise is widely recognized.

"In 1943 delegates from 44 countries representing the United Nations (including Canada) met at Hot Springs, Virginia, to consider world problems of food and agriculture. Their report is a matter of public record. Section 17 of that report reads as follows: Whereas:

'(1) The cooperative movement has been of very great importance in many countries, both to urban and rural populations, especially in agricultural districts where farming is based on small units and in urban areas of low-income families;

(2) The proper functioning of cooperative societies may facilitate adjustments of agricultural production and distribution, as members have confidence in the recommendations and guidance of their own cooperative organizations, which they know operate in the interest of their members and of society in general.

(3) The democratic control and educational programs, which are features of the cooperative movement, can play a

vital part in the training of good democratic citizens and assist in inducing a sound conception of economic matters;'

"The United Nations Conference on Food and Agriculture recommends:

'(1) That, in order to make it possible for people to help themselves in lowering costs of production and costs of distribution and marketing:

(a) All countries study the possibilities of the further establishment of producer and consumer cooperative societies in order to render necessary production, marketing, purchasing, finance and other services;

(b) Each nation examine its laws, regulations and institutions to determine if legal or institutional obstacles to cooperative development exist, in order to make desirable adjustments;

(c) Full information as to the present development of cooperatives in different countries be made available through the permanent organization recommended in Resolution II.'

"(42) The practice of men working together to achieve a common purpose is as old as humanity itself.

"Cooperative associations, as we know them in Canada to-day, are self-help institutions, designed to enable the masses of the people to help themselves. They promote habits of self-reliance and independence amongst the people they serve. They help to develop a sense of responsibility and a capacity for public service in their members.

"Just as cooperation flourishes best in a free country, its widespread practice helps to strengthen the democratic foundations of that country. In its very nature it must be opposed to dictatorship. In the opinion of the great majority of Saskatchewan farmers, cooperative enterprise is the truest

form of 'free enterprise' operating in Canada to-day.

"Hitherto the social and ethical value of the co-operative movement has been recognized not only by the governments of all of the provinces as well as the Dominion of Canada, but also by the governments of all other democratic countries.

"The recommendation of the United Nations Conference on Food and Agriculture quoted above urges each participating nation to examine its laws with a view to adjusting any legal or institutional obstacles to cooperative development. We submit that to impose an income tax on cooperative savings before they are distributed to the members entitled thereto would be to impose an additional obstacle to cooperative development, and that it is not in the national interest that such action should be taken."

All of which I respectfully submit on behalf of
Saskatchewan Co-operative Producers Limited.

BY MR. MILLIKEN:

Q. Mr. Weston, on page 17 of your brief you have referred to the purchase of elevator and commercial reserve deductions. I think possibly that is not clear to people who are here for the first time. As I understand it, this is the correct statement. You have approximately \$12,188,000 of elevator deductions which are credited to the individuals from whom you secured them?

MR. PARKER: That is on the books?

MR. MILLIKEN: Yes.

MR. PARKER: Of the Elevator Company?

MR. MILLIKEN: No; this is of the pool itself. These deductions were taken from the grain delivered between the

years 1924 and 1928, for sale through the pool. They were taken in accordance with the terms of the original contract and the second term contract, both of which are filed with the Commission. Under the terms of those contracts 2 cents a bushel was to be invested in elevator facilities or the stock of an elevator company, and there was 1 per cent of the gross selling price for a commercial reserve. The elevator deduction amounts to \$12,188,000, odd, and the commercial reserve deduction amounts to slightly over \$6,500,000.

Q. Mr. Weston, you have said in your brief that certificates were issued, or a document was issued to the people from whom those were taken, showing their interest in them, and those documents are on file with the Commission. You have also in your brief, I am not just sure of the page, said that the wheat pool got an amendment to its Act so that the directors could prohibit the transfer of those deductions, and you passed regulations so that they could not be held or transferred to anyone other than another member. Is that correct? A. That is correct.

Q. Then on page 17 of your brief you proceed to say -- or before dealing with that I had better make another point clear. Those \$12,000,000 of elevator deductions which the wheat pool obtained from its members under its contract have been invested in the stock of the elevator company. That is correct? A. That is correct.

Q. And that is the only money which is invested in the stock of the elevator company? A. No; there is about \$7,000 of the commercial reserve.

Q. About \$7,000 more than the \$12,188,000? A. That is right.

Q. All of that stock is held in the name of the pool. If anyone who has had a deduction taken from him, an elevator deduction which you are holding, wants to dispose of his interest, he does not dispose of a share in the elevator company; he disposes of the deduction certificate he is holding, or the document which says he has an interest in these deductions. Is that correct? A. That is correct.

Q. On page 17, then, you go on to say that in order to keep the ownership and control of these deductions in the hands of cooperative members, for a number of years past instead of paying all of the excess charges refund in cash you have said to your members, "We will give you part of this money in cash. The balance we will not give you in cash at all; we will give you the balance in the form of elevator and commercial reserve deductions." You have none of those, I understand; those certificates are all in the hands of your members? A. That is true.

Q. So if you are going to place any elevator deduction to my credit, we will say, in lieu of giving me cash for a patronage dividend, you have to go out and buy it from somebody. Is that right? A. That is right.

Q. And what you are saying on page 17 of your brief is that for a number of years you have been paying part of the excess charges refund in cash, and you have been paying part of it by going out and buying these deduction certificates and placing those to the credit of the man who otherwise would have got more patronage dividend or refund of excess charge in cash. Is that right? A. That is right.

Q. I hope I am making this clear. Now you say on page 17 that in order to buy those certificates or those

deductions from your members, you first went out and bought them from the estates of deceased members? A. They offered to sell them.

Q. Well, that is the way you would have to do it; if they would not offer to sell you could not buy them? A. That is right.

Q. The next class of people from whom you take them are members who have ceased farming or who have become totally disabled? This is on page 17. A. That is correct.

Q. The third class is members over sixty-five years of age. Now, Mr. Wesson, at the end of that page you say that approximately one-sixth of the total deductions have thus been transferred to the hands of cooperative members. Do you mean approximately one-sixth of the \$18,000,000 of deductions? A. Yes.

Q. Have been transferred from the assets of deceased members, members who have ceased to farm, or members who have become over sixty-five years of age, to people who are delivering grain to you now? A. That is right.

Q. You do not mean that the other five-sixths are not in the hands of cooperative members? A. No, sir; they are all in the hands of cooperative members.

Q. There is no such suggestion as that? A. What we have done is to remove what we call the deadwood and turn over the equity to the live members of the organization.

Q. And at the same time you have endeavoured to get the estate or the member from whom you are buying the deductions, if he is no longer farming, to also transfer his \$1 share? A. Yes.

Q. To whom? A. To a new member to which the board has allotted it.

Q. He signs a transfer in blank and authorizes you in writing to transfer it to a new member? A. Yes; and when he does that he gets back his dollar.

Q. There is another point about these deductions we might as well clear up now. The first year you commenced to buy them, that is this part of the excess charge refund, and place them to the credit of the individual instead of giving him the cash in the excess refund, you did not buy them at one hundred cents on the dollar, did you? A. No; the first year it was fifty cents on the dollar.

Q. Why was it fifty cents on the dollar? A. Because with the big liability that we had at that time, on the 1929 overpayment, the directors estimated that 50 cents was a fair value for the transfer, on the basis of the value of the organization at that time.

Q. In other words they thought that was all they were worth? A. Yes.

Q. But as they kept paying off the overpayment to the government, and getting down their debt, they considered that they were worth more money? A. That is correct.

Q. And they kept raising the price until now they are paying how much? A. One hundred cents on the dollar; face value.

Q. That is why they started at fifty cents and got up to one hundred cents? A. That is right.

MR. MILLIKEN: This is rather a long brief, Mr. Chairman, and I left out of it the details of the 1929 overpayment. I should like to file with you, not as part of the brief but for your use, a statement of the 1929 overpayment. I am having it prepared; I thought I would have it this morning, but it is not here. A number of witnesses have been asked

by you, sir, what would happen if they ever had a loss and how they would handle it. Well, we have an organization before you at the present time that had a loss of well over \$13,000,000, and they proceeded to handle it on the basis of the collecting ~~from the individuals~~ who received the overpayment. If you want to really get a history of how easily that is done, we will have the story for you.

In this particular case the company decided that 18 cents a bushel was all they would charge to any individual member as his share of the overpayment. If he had grain on which there was an overpayment of more than 18 cents a bushel, the company would absorb it. If you ever set out to collect money from individuals in this way you will realize how difficult the job is. The governments of the three western provinces actually announced in 1931, that for the benefit of pool members of the three prairie provinces no money would be taken from any grain they might deliver to the pools that year, to pay the overpayment. The whole story of that overpayment is in the supplementary paper or document I wish to file with you, which will tell you exactly what happened and how they worked, and you will see how impossible it was, anyway in the wheat business --

THE CHAIRMAN: That shows the payments advanced by the government also?

MR. MILLIKEN: Yes, sir.

THE CHAIRMAN: To take care of that?

MR. MILLIKEN: Yes, sir. Those are also set out in statutes. I wired to Saskatchewan last week to get you the three acts, because they are in three different years, which would give you the whole picture of the government end of it. Unfortunately the King's Printer in Regina has destroyed all

the loose-leaf statutes prior to 1940, and in order to give you those three acts I have to give you three volumes of statutes. I hesitated to do so, not only because of the size of the volumes but also because of the cost, and I have not obtained them for you yet.

THE CHAIRMAN: Perhaps we can look to Mr. Arnason for those.

MR. MILLIKEN: Perhaps so; you may get them from him. In the meantime this memorandum of which I speak is being prepared.

MR. PARKER: Were those overpayments received from or charged to the same individual members who had been overpaid in the first instance, or were they charged to a future generation of shippers, in part?

MR. MILLIKEN: The individual who had received the overpayment was charged with the overpayment up to 18 cents a bushel. Some of them did not get 18 cents, and some got more. The organization actually passed a resolution that the money would be collected, with 5 per cent interest, because they were paying 5 per cent interest to the government.

Q. I think I am correct in saying, Mr. Wesson, that none of the money was ever collected and none of the interest was ever charged; is that correct? A. That is correct.

THE CHAIRMAN: I think you had better ask Mr. Wesson whether he approves of your statement, Mr. Milliken.

BY MR. MILLIKEN:

Q. You have listened to what I have been saying? Is what I have said correct? A. Absolutely.

MR. MILLIKEN: Does that clear up the difficulty in Mr. Parker's mind? I think that is all I will ask Mr. Wesson

at the present time. Mr. Parker told me he was not clear on what this meant, and that was why I made this statement.

MR. PARKER: Mr. Chairman, this brief is quite complete in a general way. Inasmuch as we have, as I said before, interests who I have no doubt do not agree with all that is in the brief at the present time, and who are here, I take it, for the purpose of assisting the Commission, the same as I am here for that purpose -- at least I hope that is the purpose of their being here -- it seems to me that to save time, instead of my taking Mr. Wesson over the course first, as it were, and then allowing them to traverse it a second time, it might be better and more satisfactory if I reserved my questions until after those interests had asked such questions as they wished. If that meets with your approval, Mr. Chairman, I suggest that we proceed in that way.

THE CHAIRMAN: I do not anticipate any objection from Mr. Fillmore.

MR. PARKER: He is here, and he can speak for himself.

BY MR. FILLMORE:

Q. You have said in your brief that you own 1,125 country elevators. Does that number include the thirty-six which you bought in 1944? A. Yes, it does. That includes the thirty-six. At the time of the drafting of the report that was the figure. This report was proposed to be given in Regina, and there have been some changes since.

Q. The country elevators of course are owned by Saskatchewan Pool Elevators Limited? The titles to the country elevators are owned by Saskatchewan Pool Elevators Limited? A. Yes.

Q. Then, would you give, offhand, the capacity of those 1,125 country elevators? A. It would only be approximate.

Q. Well, what is it, approximately? A. About 37,000,000 bushels.

Q. Then, I shall refer to the Saskatchewan Pool Elevators Limited as the Elevator Company. It owns or has title to the four terminal elevators? A. Yes.

Q. At the head of the lakes. A. Yes.

Q. And the elevator at Buffalo, in the state of New York, to which you referred, is a transfer elevator? A. Yes, there are three at the head of the lakes. We have one leased from the Canadian National Railways.

Q. And two of those terminal elevators, the pool owned before the Elevator Company was incorporated; is that correct? A. I am not just clear on your question.

Q. Well, it does not matter, particularly. Do you remember the capacity of your terminal elevators, that is the three which you own and the one under lease?

A. Approximately 23,000,000 bushels.

Q. I shall refer to your parent company as the Pool. The Pool was incorporated under the Saskatchewan Companies Act in 1923. A. Yes, that is correct.

Q. And I believe that in 1929 you sought and obtained from the legislature what might be called a private act, enlarging the powers of the wheat pool, is that correct? A. We had our first private act passed in 1924, but we had amendments from time to time of the act itself.

Q. Yes, that is right, 1924. That is chapter 66. It gave you the right to carry on the business of collecting, buying and receiving grain, and doing all kinds of grain business. A. Yes.

Q. Such as warehousing, operating elevators, and so on. A. Yes.

Q. Or, to put it generally, you have very wide powers under the 1929 Act. A. Yes, we have.

Q. Then, I believe you also have power to invest in stock of other companies, and to take over other business if you so desire. That is a matter of referring to the statutes only. Now, Mr. Milliken has pointed out that in 1944 your name was changed by dropping the word "wheat", and you also got power in connection with taking stock in live stock cooperatives. A. It was an amalgamation between two organizations.

Q. I believe your articles of association provide that the powers of the association may be exercised by the directors?

MR. MILLIKEN: Which company.

MR. FILLMORE: Both the Pool and the Elevator Company.

BY MR. FILLMORE:

Q. I am referring in particular to section 17 of

your articles. I think they are the articles of the Pool. It is stated that the business of the company shall be managed by the directors. Mr. Milliken can check that if he wishes. Now that is part of the charter of the Saskatchewan Pool, and you have told us that the Pool owns all the shares in certain subsidiary companies. A. All except sixteen qualifying shares.

Q. They own and control all the shares, and that includes the companies you have mentioned. You mentioned the Saskatchewan pool terminals; you mentioned the Saskatchewan Pool Elevators Limited. You have all the shares in that? A. Yes.

Q. At a par value of some \$12,000,000? A. Yes.

Q. And the Saskatchewan Pool has all the shares of the Saskatchewan Pool Terminals Limited, except the qualifying shares? A. Yes, that is correct.

Q. And also of Modern Press Limited? A. Yes.

Q. In which your investment is \$100,000. A. Yes.

Q. Also Saskatchewan Co-operative Livestock Producers Limited? A. Yes.

Q. And Canadian Co-operative Wheat Producers Limited? A. Yes.

Q. \$50,000 invested there. A. Yes.

Q. And Canadian pool agencies, which have some \$6,600 invested. A. Yes.

Q. Then, in the Saskatchewan Co-operative Credit Society Limited? A. Yes.

Q. That is correct, is it not? A. Yes, that is correct.

MR. MILLIKEN: Have we shares in the Co-operative Credit?

THE WITNESS: We advanced them a loan. I do not

think it represents a share.

BY MR. FILLMORE:

Q. These companies which we have mentioned are all incorporated under The Joint Stock Companies Act, are they not? A. The parent organization is under a special act. The others -- some are under joint stock companies acts.

Q. All except the Saskatchewan Co-operative Live-stock Producers and the Saskatchewan Co-operative Credit Society -- all the others are?

MR. MILLIKEN: And the insurance company.

MR. FILLMORE: I have not got to that yet.

BY MR. FILLMORE:

Q. All excepting those two are incorporated under the ordinary joint stock companies acts? A. Yes, I think that is correct.

Q. And companies having share capital which you hold? A. Yes.

Q. And in turn the Saskatchewan Pool Elevators Limited has investments in other companies, has it not? A. Yes.

Q. The Elevator Company owns shares in Canadian Pool Agencies Limited? A. Pool insurance.

MR. MILLIKEN: I do not think so.

MR. FILLMORE: I may be wrong there.

THE CHAIRMAN: That is the one we heard about in Regina, is it not?

MR. FILLMORE: In Winnipeg, I believe it was.

BY MR. FILLMORE:

Q. The Elevator Company has shares in the Pool Insurance Company? A. That is correct.

Q. And we had the details of that in Winnipeg. Do they hold shares in any other company to your recollection?

A. I cannot remember any others.

Q. Then, the Pool has shares in the Terminal Company; you have a share in that? A. The parent organization owns all of them, except sixteen qualifying shares.

Q. The Elevator Company owns the terminal elevators? The Elevator Company has title to the terminal elevators?

A. The Saskatchewan Pool Elevators own the terminals.

Q. And they lease the terminals to the Saskatchewan Pool Terminals Limited? A. For operation, yes.

Q. The Pool Terminals Limited pay rent to the Elevator Company? A. Yes.

Q. And at the end of the year the net earnings, or whatever operating profit there is, is paid over by the Terminal Company to the Elevator Company? A. Yes.

Q. It does not pay dividends on the share capital? A. That is correct.

Q. It pays earnings over by reason of some agreement with the Elevator Company. A. Yes.

Q. I believe that the Elevator Company was incorporated in 1925; is that correct? A. Yes.

Q. The Saskatchewan Pool Elevator Company Limited. A. Yes.

Q. The Elevator Company and the Pool bought from the company which you have mentioned, the earlier company, 451 country elevators and two terminal elevators? A. That was in 1926.

Q. In 1926, you say? A. Yes.

Q. Then, since then the Elevator Company has operated the country elevators of the terminal elevators? The Saskatchewan Pool Elevators Limited have since 1926 operated the country elevators and the terminal elevators.

MR. MILLIKEN: Do you mean the Terminal Company?

MR. PARKER: The Terminal Company has the terminals leased.

BY MR. FILLMORE:

Q. It has operated the country elevators and the terminals have been operated under the arrangement which we have mentioned. A. Yes, under separate management.

Q. Up until 1930 -- or, July 31, 1931, the Saskatchewan Pool operated a large contract pool. A. Yes, that is correct.

Q. In 1931 you released the members from their contracts. A. That is what we say in the brief, yes.

MR. FILLMORE: I might point out to the Commissioners the method of operation of the Pool, that is, the contract pool as set out in this Supreme Court case in 1930. I refer to Supreme Court Reports at page 408, where the details are given. Also, at page 407 a resume of the contracts is set out. I understand that Mr. Milliken has filed contracts, but the summary of the contracts is found at page 405. It shows what deductions are authorized by the contracts -- I believe it is 2 cents per bushel -- for elevator reserves, and 1 per cent of the purchase price, or sale price, for commercial reserve.

BY MR. FILLMORE:

Q. Then, up until 1931, Mr. Wesson, you had what you describe in your brief as a central selling agency; that was called the Canadian Co-operative Wheat Producers Limited. A. Until what year, do you say?

Q. Until the last crop handled by the central selling agency, which was the crop grown in the summer of 1930, was it not? A. Yes, but it was not disposed of until after 1935.

Q. That was the last year, I believe, in which the central selling agency, the Canadian Co-operative, acted as selling agency for the three provincial pools.

A. That is the last year it took delivery from the pools, yes.

Q. The last year in which it took delivery. A. Yes. I already said that the wheat taken in 1930 was not finally disposed of until after 1935.

Q. Now, may I say to the Commission that I think it might be of some interest just to get the details of the operations of the contract pools, in view of the fact that there was some change made in 1931, and to contrast the way business was done before 1931 and after that year. I do not wish to weary the Commission, but I should like to read what appears to be a compact statement of the method of operation, and then I shall ask you, Mr. Wesson, if it is correct.

THE CHAIRMAN: Do you wish Mr. Wesson to confirm the Supreme Court decision?

MR. FILLMORE: I could ask him how it operated, but that might take longer than if I read it.

THE CHAIRMAN: We sometimes think it should be confirmed.

MR. FILLMORE: I suppose that when one of your lordship's judgments is confirmed by the Supreme Court you still think you are right.

THE CHAIRMAN: Quite. So far as I am concerned, I have read that statement, and I believe my colleagues have read at least part of it.

MR. FILLMORE: No doubt Mr. Milliken has read it, and if he or Mr. Wesson takes the view that the method of operation is not correctly described at page 408, they

will so state. If he thinks it is not, he may re-examine Mr. Wesson, or let me know, in any event.

BY MR. FILLMORE:

Q. In passing I might point out that at page 409 we find this:

"In my opinion the marketing agreement and the confirming act do more than simply create the relationship of principal and agent or mercantile agent in the ordinary sense between growers and association. That relationship the agreement no doubt creates, but in addition thereto the property in the grain and in the proceeds is vested in the association, and all rights of ownership thereto without limitation are exercisable by it, for all or any of the purposes set out in the agreement."

So that even where there was an agreement of agency, apparently the view was that the property passed to the association. I should like to deal briefly with the commercial -- well, first I believe, Mr. Wesson, that you are a director of the Canadian Co-operative; that is the central selling agency? A. Yes, I believe since 1927.

Q. Mr. Milliken has mentioned that the elevator reserves to the extent of a little more than \$12,000,000 were deducted and commercial reserves to the extent of \$6,500,000; is that correct, that you have bought back any of the commercial reserves? I thought you were only buying elevator reserves. A. No, both reserves. The face value of the reserves were taken from the estates, both commercial and elevator reserves, and placed to the credit of the new owner on the basis of their earnings.

Q. Then, Mr. Milliken can check me on this, but I am under the impression that you had invested only about

\$2,000,000, which would be one-ninth of all in reserve. That would be about one-ninth of the total reserve.

MR. MILLIKEN: About \$3,000,000, I believe it is.

THE WITNESS: The face value is over \$3,000,000, up to last year.

BY MR. FILLMORE:

Q. And you have told us that these reserves were invested in the Saskatchewan Pool Elevators Limited and other companies. A. Not the elevator reserves, sir.

Q. The elevator reserves went to the Pool Elevators Limited? A. Yes.

Q. And did not some of the commercial reserve money go to the Pool Elevators Limited? A. The Pool Elevators, in the main, borrowed money for liquid capital.

Q. Put it this way: is it not a fact that about \$5,000,000 of commercial reserves was loaned to the Elevator Company and used by the Elevator Company as working capital?

MR. MILLIKEN: When?

BY THE CHAIRMAN:

Q. On that point, I understand that these reserves were represented by certificates? A. All except the 1928 deduction, sir.

Q. Were the certificates for both commercial and elevator reserves identical? A. Yes, I think you have them on file.

Q. Was there any distinction between the two, at all, in the certificates?

MR. MILLIKEN: My recollection is that the main distinction is that one said that it would be payable at 5 per cent interest and the other said at 6 per cent.

THE WITNESS: If it was earned.

MR. MILLIKEN: I think they were the same, otherwise.

MR. PARKER: Were they designated as commercial reserves?

MR. MILLIKEN: Yes; one is commercial reserve deduction, and the other is elevator deduction.

BY MR. ARNASON:

Q. Would you care to explain, or give us the reason as to the difference in the interest rate payable on the two? One, I believe you said, was 5 per cent and the other 6 per cent. A. The elevator deductions, according to contract, must be invested in handling facilities for the services of the growers. The commercial reserve, according to contract, can be used for any purpose of the organization. I really cannot answer the question as to where the difference was, or as to why one should be 6 per cent and the other 5 per cent, if earned.

BY MR. FILLMORE:

Q. The contract provides that in addition the association may deduct such percentage not exceeding 1 per cent of the gross selling price of the wheat, as it shall be desirable, as a commercial reserve to be used for any of the purposes or activities of the association.

A. I just said that, yes.

Q. Speaking of the commercial and elevator reserves, I have what purports to be a copy of a circular which you sent out in 1941 giving, I assume, the views and policy of the company as regards elevator and commercial reserves. If that is representative of the views of the directors I will put it in and save the time of reading it. Mr. Milliken may have it over the adjournment, and verify it.

Then, speaking of the loan of \$4,900,000 to the

Elevator Companies Limited, I believe that was made in 1927, and you find it in the 1927-28 report at page 13.

MR. MILLIKEN: What do you wish to know about it?

MR. FILLMORE: I brought out the fact that approximately \$5,000,000 had been loaned by the Pool to the Elevator Company, and Mr. Milliken asks me when it was. I am just stating that apparently it was in 1927. I think we have already brought out the fact that the Elevator Company was the purchaser of 451 country elevators from the former companies.

BY MR. FILLMORE:

Q. Is that correct? A. Yes.

Q. And the price was about \$11,000,000, and the purchase agreement was confirmed by statute. A. It was, to be exact, \$11,049,000. I can remember it yet.

Q. I think it was \$11,059,000. A. Yes, that is correct, \$11,059,000.

Q. And that was confirmed by statute, chapter 71, -- the 1927 statutes. Since 1926 the number of your country elevators has grown to 1,125, and the terminals have grown from two to four.

MR. MILLIKEN: I have filed with the Commission a statement with respect to the elevators they acquired over the years, from beginning to end.

BY MR. FILLMORE:

Q. They were not acquired with elevator or commercial reserves? I take it they were acquired through operations of the Saskatchewan Pool Elevators Limited.

A. The money was first invested to build terminal No. 7. The money was repaid as the years went by.

THE CHAIRMAN: This would seem to be a suitable place to adjourn.

The Commission adjourned at 12.30 a.m.

Ottawa,
Monday, April 23, 1945.

The Commission resumed at 2.15 p.m.

BY MR. FILLMORE:

Q. Mr. Wesson, just another word about the commercial reserves of elevator deductions. Is it your idea to get these out of the hands of the old members who contributed away back prior to 1930, and gradually work them into the new membership? A. Yes, that is what we call our revolving door plan.

Q. In other words, for your reserves you have a revolving door plan of transferring this liability from former members or estates or elderly people to present members? A. That is correct.

Q. But I take it you have no plan as yet for redeeming these reserves out of the assets of Pool Elevators Limited? A. No, we do not intend ever to have any watered stock in the organization.

Q. In other words, you intend that the commercial and elevator reserves will represent a continuing and permanent investment. A. Yes.

Q. And I believe that you have at present legislation, some of which is referred to in your brief, giving power, under certain circumstances, to withhold reserves. No one can demand payment from you of any share in the reserves so long as you are indebted to the government of the province of Saskatchewan, that being by virtue of chapter 102 of the statutes of that province for 1930, and also the 1928 and 1929 statutes, chapter 83. I think they are referred to in our brief, so that the Commissioners can get them. Then, that refers also to the statutes of Saskatchewan for 1932, chapter 77, and for those of

1933 at chapter 80, and for 1937 at chapter 99. Mr. Milligan can check me on this. You have those statutes, I believe, dealing with the power of the wheat pool to withhold payment of reserves. A. My understanding is -- and this will not be a legal statement -- that so long as the Pool owes money to the provincial government no grower can sue for the return of his deductions. That is my layman's answer to that question. It might not be a proper legal answer.

Q. I am not criticizing your answer. I have just referred the Commission to the legislation, and it will speak for itself.

MR. MILLIGAN: Would you mind if I just interrupt at this point? It is referred to in your brief, and you have referred to it now, where it is stated that chapter 102 of 1930 gives the Pool the right to retain its deductions. That is an amendment to the statute of 1924. But I would point out that 1924 gave the same right. Originally there was that right in that section.

MR. FILLMORE: Very well; perhaps if you have it in consolidated form the Commission might see it.

MR. MILLIGAN: I have already given the Commission the statute as it is to date. What I am prepared to give the Commission is the statute as it was in 1924 and as it was in 1930, and any amendments which have been made. If the Commission is going to look at the sections to which Mr. Fillmore has referred, it should have all the amendments. I say that because the 1930 amendment which speaks about being able to retain these deductions for an indefinite period of time was not an amendment. That was in the statute of 1924. It is another part of the same section. That is all I wish to say.

MR. FILLMORE: We will accept that statement, so that we may have the record straight.

BY THE CHAIRMAN:

Q. Let me get this clear; is it correct to say that so far as your pool is concerned the investor in the pool, who is the holder of the deduction, cannot dispose of his capital investment as can the ordinary stockholder in a company? A. That is correct.

Q. That is a disadvantage, then, which the co-operative has. A. We have a provision under which, if the holder of deductions wishes to sell it must be to another member, and must be approved by the board. But I noticed that you mentioned restrictions, if I understood you correctly. Well, by virtue of the fact that over three million have already been transferred it does not look like much of a restriction.

BY MR. FILLMORE:

Q. Furthermore, no holder of reserves can at the present time in any event demand repayment of reserves or his share of the reserves?

MR. MILLIKEN: That question is before the courts at the present time. It is before the Appeal Court of Saskatchewan, so that statement is hardly accurate.

BY MR. FILLMORE:

Q. We can refer to the judgment when we are arguing, but as I understand it it is common ground that while the wheat pool is indebted to the government of Saskatchewan no member can demand payment of his share in commercial or elevator reserves.

MR. MILLIKEN: That is correct.

BY MR. ARNASON:

Q. In addition to the conditions mentioned in the

brief, do you provide any other method, or any other methods, or is there any other set of conditions under which a member can withdraw from the company and get his investment back -- with the exception of those mentioned in the brief? A. Yes; any grower who wishes to dispose of his equity can always dispose of it to another member, subject to the approval of the board. That has been the policy since 1924, and it will be done at not less than 50 cents on the dollar. That has no relationship whatsoever to the plan of the revolving door. Any grower has always been free to do that, if it is approved by the board, of course. I should like to explain that there have been times when lumber companies, machine companies and banks have taken over these certificates for the purposes of security. There has been a lot of struggle between our organization and others as to whether they should be transferred, and the board has remained adamant, and would not make the transfer -- only to another producer or grower member.

BY MR. FILLMORE:

Q. As you have explained in your brief, in 1930 the wheat pool incurred losses to the extent of \$13,265,000, as a result of overpayment to growers, as you have described it? A. Yes.

Q. And then the provincial government came to your rescue, and the Saskatchewan Wheat Pool and the Pool Elevators Limited guaranteed or agreed to become responsible to the government for this liability, which the government had incurred. A. With the mortgage on the facilities.

Q. I beg your pardon? A. With the mortgage on the facilities, as well as the guarantee.

Q. Yes. And that deal was authorized or confirmed by one of the statutes to which I have referred. Now, following the losses in 1929 and 1930 I believe you decided to alter your plan of business, to some extent.

A. Not because of the losses, but because the price of wheat was too low, and we could not advance cash payments.

Q. Whatever the reason was, I believe that you started to operate the country and terminal elevators -- I mean the Elevator Company did. It started to operate the country and terminal elevators the same as any elevator company operates those elevators. I mean, so far as business operations are concerned, - not dealing with your relations to your members. A. Do you mean the purchasing and selling of grain?

Q. Yes. A. Yes, that is true, except for voluntary pools.

Q. Along with that you had what you call a voluntary pool, and that voluntary pool was kept going until 1935 when the Canadian Wheat Board was formed. A. Correct.

Q. And I take it that this voluntary pool, or that into this voluntary pool went only a small proportion of the grain which was delivered to your country elevators?

A. That is correct, small in relation to the total.

Q. For example, I am instructed, and the report shows that for the crop season 1931-32 the total wheat delivered to your country elevators was 54,673,000 bushels, whereas the number of bushels which went into the voluntary pool was 1,063,000? A. That is correct.

Q. That is about 1/54th? A. Yes.

Q. And then, according to your statement, I am instructed that in 1932 and 1933 the total wheat delivered to your country elevators was 87,738,000, and into the

voluntary pool it was a total of 6,500,000; and in 1933 and 1934 out of deliveries of 58,700,000 only 1,298,000 went into the voluntary pool; and that in 1935, the last year, there were 53,767,000 total deliveries, and into the voluntary pool went 1,639,000. So that the voluntary pool conducted after July 31, 1931 was, roughly, only a small proportion of the total wheat delivered to your country elevators. A. May I ask if the figures which you are quoting represent deliveries of all grains to pool elevators, or just wheat?

Q. Just wheat. A. Thank you.

Q. And I would be glad to have those figures checked. I am not asking you to verify the exact amount right now. Well then, at the same time that you decided to make this change Pool Elevators Limited passed a by-law amending its articles of association; that is to say, in November 1931 you inserted a by-law, which is found at page 16 of your brief, and which was not read. However, I shall read it, because I regard it as rather important in that it indicates a change in policy. It states:

"Notwithstanding anything contained in this article any part of the profits or surplus earnings of the company may be paid or credited to members of the company, patrons, classes.....in proportion to the amount of grain delivered."

That was something you did at the time?

THE CHAIRMAN: Do you regard that, Mr. Fillmore, as a definition of what profits are?

MR. FILLMORE: No, I regard it as a statement. They say that in their own pool any part of the profits or surplus earnings of the company may be dealt with in a certain way. My point is that you have to have (a) or

(b) before you have anything to distribute.

THE WITNESS: The change in this article of association did not change the policy.

BY MR. FILLMORE:

Q. It did not change the policy? A. No, it was done on the advice of counsel. It did not change the policy at all.

Q. Then, from and after 1931 I believe you paid the current market prices to members and non-members, alike; I am leaving out of consideration the voluntary pool.

A. Yes.

Q. For the rest of the business you paid current prices to members and non-members alike. A. Yes, except for Wheat Board wheat, which was different.

Q. We will come to the wheat board later. But in taking delivery of grain you used the cash tickets which are provided for in the Grain Act. You used the forms of grain tickets which are provided for in the Canada Grain Act?

MR. MILLIKEN: You are not allowed to use any other.

MR. FILLMORE: I am just pointing that out. It might assist the Commission if I were to leave, for convenience, a copy of the Canada Grain Act. The ordinary cash purchase ticket has these words, "purchased from".

BY MR. FILLMORE:

Q. The form of grain tickets is to be found at page 80; you have a special bin ticket, form 81, the ordinary elevator receipt; and form 82 is the cash purchase ticket, and so on. They are all statutory forms, and have to be used by country elevators. Now, when grain was taken in on a cash purchase ticket, what is commonly called street wheat -- you sell in respect of the member and non-member

on the same basis. A. No, we do not.

Q. Paid the same price. A. No; we paid him the same price.

Q. That is all I wish to know. A. At that time. But that is not the end, so far as the member is concerned.

Q. I know what you are thinking about, and I shall come to that later. You made no deductions, but you did credit each member who made deliveries on your books on a bushel basis. You credited him with the number of bushels delivered. A. The number?

Q. Yes. A. Yes.

Q. And you separated wheat and coarse grains. A. Yes.

Q. And did you subdivide wheat into grades, or just lump it? A. Not for the purpose of distributing the surplus, no.

Q. Or coarse grains; you did not subdivide it for the purpose of distributing surplus? A. No, not according to grades.

Q. And the dividends which were afterwards declared -- call it dividends or distribution, or whatever you like to call it --- A. We prefer to call it excess charges refund.

Q. At a flat rate per bushel, or so much for each bushel. A. For each kind of grain.

Q. And we have already said that the growers were released from the contracts. A. In 1931.

Q. So that, aside from your relations with your members, and your dealings between the elevator companies and members -- your pool and the members -- the Elevator

Company operated its country and terminal elevators in the same way as any other elevator company, leaving out the relations with your members, and what you did for them later? A. Could I answer that question by saying this, that the pool elevators changed just in exactly the same way as the line companies changed, because those line companies handled pool wheat on the same basis as the pool elevators. So we all changed together.

Q. I am not going into the reasons. I am just pointing out, or asking you if you did not after 1931 operate your country and terminal business in the same way and along the same methods as any private company was operating its elevator? A. And prior to that, sir.

Q. Coming down to the method of operation, would it be correct to say that in later years most grain has been taken into the elevators on the cash purchase ticket? Most of the farmers and members and non-members have sold their grain outright at the time of delivery to the elevators? A. In later years, yes.

Q. And would you say of late years 90 or 95 per cent has been bought by the elevator companies, including your company, on the cash purchase ticket? A. I would say since the system of quotas has been used, making it very difficult for the average farmer to load a carload of grain, that 95 per cent has been purchased on the cash basis, or advanced on Wheat Board wheat.

MR. MILLIKEN: Do you make any distinction between Wheat Board wheat and non-Wheat Board wheat when you ask that question?

MR. FILLMORE: No. I am speaking, too, of coarse grains.

Q. Prior to September, 1943 was a large percentage

of wheat paid for with cash purchase tickets? A. There is still a considerable carload shipment of coarse grains, or there has been in the last few years, chiefly malting barley and special grades of oats.

Q. But the great bulk of wheat and coarse grains has been taken in on the cash purchase plan? A. That is correct, distinguishing again between wheat board deliveries and other grain.

Q. The Elevator Company Limited is of course licensed; both country and terminal elevators are licensed as public elevators under the Canada Grain Act? A. Correct.

Q. And your Elevator Company Limited is also licensed as a track buyer and commission merchant? A. Yes.

Q. I believe I asked you this, but I shall repeat it: the elevator companies bought grain from non-members and members alike? A. We had to, under the public licence.

Q. And you used the same statutory form of tickets and paid the same initial prices? A. We were compelled to.

Q. And I take it that since the establishment of the Canadian Wheat Board in 1935 you operated in accordance with the requirements of the board? A. According to the agreement signed with them.

Q. It has been customary each year for elevator companies to sign an agreement with the Canadian Wheat Board, has it? A. Yes.

Q. And for how many years? A. In 1935-36, 1936-37 and 1938 there were no agreements. The wheat board did not function to take delivery in those years. But in every year since that time there has been an agreement in each year.

Q. Was there an agreement entered into in 1944?

A. Yes.

Q. Do you happen to have a specimen of that wheat board contract with you?

MR. MILLIKEN: One was filed, although I have not a copy of it.

MR. FILLMORE: If one has been filed, that is sufficient.

BY MR. FILLMORE:

Q. In some years there were quotas for grain; the wheat board set quotas in some years? I understand that in those years quotas were established for grain.

A. In every year there has been quotas, increased according to the elevator space available. This starts at 3 and 5 bushels to the acre.

Q. And there have been floor prices for wheat and other grains? A. That is correct.

Q. Established by the board? A. Yes.

Q. Now, dealing with your terminal elevators has all the grain taken into your country elevators been put into your terminals, or has some been diverted to other places? A. A considerable quantity during this past year, unfortunately, has been diverted.

Q. And on grain which is diverted you sometimes get what is known as a premium, or something over and above the going price. A. A diversion charge.

Q. On the other hand I presume grain has been diverted to your terminal elevators from other grain companies. A. In that case we pay them a diversion charge.

Q. So that in your terminal elevators you both receive and give premiums for diverting grain? A. That is correct.

Q. Now, I do not know whether you are in a position

to evolve this point, but I am instructed that in the season 1943-44, according to your directors' report, you received about 1,800,000 bushels more into your terminals than came from your country elevators. That appears at pages 9 and 10 of your directors' report. If that is not correct you may check me on it. A. I have not the report here, but if it is in the report it must be correct.

Q. Since 1935 the wheat board, I believe, has been purchasing part of the wheat delivered into country elevators; is that correct? A. I did not get that question. Would you repeat it?

Q. Since 1935 the wheat board has bought part of the wheat which came to country elevators. A. Yes; the grower had at any time the choice of delivery to the wheat board, or sale on the open market, until December 27, 1943.

Q. When the price dropped down to the floor the Canadian Wheat Board got the grain; and of course if the grower could get more in the open market it was sold in the open market. A. That is generally true, yes.

Q. So that your company, I take it, sold grain which you had purchased through the wheat board both to the wheat board and in the open market when you could get a better price there. A. Our members did that sometimes, yes.

Q. I will call it the Pool Elevator Company Limited; you have in mind the members of that organization.

A. I may have misunderstood you. It is the members who have the freedom of choice. It was not the company who had the choice to sell to the wheat board, or otherwise. It was the members across the country.

Q. The wheat which you purchased, for example, on

cash purchase tickets at country elevators you could either sell on the market, or deliver to the wheat board.

A. No, we could not. We could only deliver to the wheat board the exact amount that the growers in the country had delivered to us on account of the wheat board.

Q. That is, up to the quota. A. No, no; whatever grain was delivered by the farmers to us was delivered to the wheat board; but we could not buy grain on the open market and sell it to the wheat board.

Q. I understand that.

MR. MILLIKEN: The wheat board act would not let them.

BY MR. FILLMORE:

Q. But did your company then buy grain from the wheat board and re-sell it? A. I am not sure that I understand your question.

Q. Did your company--I believe the wheat board had wheat to dispose of, and also some coarse grains in the last few years. Has the Elevator Company bought wheat from the wheat board? A. So far as I understand it the wheat board, under the Wheat Board Act, and through certain regulations, are using the existing machinery in the disposal of their stock. Pool elevators are in the export business and we have purchased wheat from the wheat board to fill demands, like all other export people in that class of business. I did not understand your question at first.

Q. There is one question I should like to ask: where the Elevator Company bought grain from 1930, on, and before it bought as an agent for the Wheat board, did it hedge grain as and when it was purchased? A. Do you mean up to date?

Q. Yes. A. No, it would not be correct to say that we did. Generally speaking all these purchases were hedged against each purchase. But during the last two years, with coarse grains being at the price ceiling, and futures being at the price ceiling, it would be foolish to hedge. But apart from that situation hedges were always put up.

Q. Prior to that you put on hedges? A. Yes.

Q. Was the Elevator Company a member of the Winnipeg Grain Exchange, and the Winnipeg Grain Exchange clearing association? A. I am not clear about the basis of the membership, whether it is in the name of persons or companies.

Q. However, the company had memberships, and I believe also belonged to the Lake Shippers Association. A. Yes.

Q. I think a statement has been filed by that association to indicate how they operate. I understand it is a sort of clearing house for terminal operations with respect to export grain. How long have Saskatchewan Pool Elevators Limited been exporting grain? A. I cannot remember the date without looking at the record, but I would say that since the inception of the pool we have always been exporting grain, either through Canadian Co-operative Wheat Producers Limited or through our own department.

Q. So far as your recollection goes, you have always had an export grain department? A. Yes, either through one channel or another.

Q. And at the present time has Pool Elevators Limited an export department? A. A department of pool elevators, yes.

Q. Are you familiar with the export business; can you explain to the Commission the mechanics of that business? A. Well, I can, but it would be a long answer.

MR. MILLIKEN: I see my learned friend has a brief explaining the whole thing to the Commission, and I would imagine whoever prepared it might have more expert knowledge about the export business than the president of our organization.

THE CHAIRMAN: Which brief is that?

MR. MILLIKEN: The exporters of grain; it has been filed by Mr. Fillmore.

MR. HOWARD: They are relying upon our facts, and just stating their own case in a very abbreviated form. They are not reciting all the facts of the organization, and they rely upon our brief to establish that.

MR. PORTER: Have they been heard, or are they going to be heard?

THE CHAIRMAN: They have not been heard. .

MR. FILLMORE: The exporters, in their brief, give certain figures as to the total sales of grain in all positions, according to the financial statement.

THE CHAIRMAN: I understand they have requested to give it immediately after your brief is concluded, Mr. Fillmore.

MR. HOWARD: After the Northwest Line Elevators, yes.

MR. PORTER: Are we having the witness examined, or is this going into the record as evidence before it has been so placed before the Commission?

THE CHAIRMAN: I do not know, Mr. Porter.

MR. FILLMORE: I am not going to read this brief.

I wish merely to bring out the fact that Saskatchewan Pool Elevators Limited is in the export business; that is, they have an export department.

MR. MILLIKEN: We say that in our brief.

THE CHAIRMAN: Why not ask the witness how they conduct that business.

BY MR. FILLMORE:

Q. Would you mind giving us a brief explanation of how the Elevator Company conducts that business? A. At the present time?

Q. Yes. A. Well, as I understand it at the present time in dealing with wheat the wheat board has set up two classes, class 1 and class 2. Class 1 wheat has been used for what they call mutual aid; and, as I understand it, the wheat board has paid to all those people in the shipping and export business a commission for taking care of the movement of this wheat to Great Britain and other countries. That is class 1. Then, in respect of class 2 wheat, that is all the wheat which has been delivered by farmers to the wheat board since September 23, 1943. The wheat board is still using all the export organizations, and quote them a price each day which, I think you will see almost every day in the grain news as it appears in the Winnipeg Free Press. Each of the groups is trying to get a volume of this business, and they are offered overseas or to the United States on a basis on the price set each day by the wheat board, trying to sell so as to allow them a small margin to take care of the cost of operation and, to use their term, a small profit. That is the basis on which we and other exporting companies are doing business at the present time. That is wheat.

Then, dealing with the coarse grains, of which there

has been a large shipment, both to the United States and to eastern Canada in the last two years, in the main, and nearly all the time, the price for all grades of oats and barley, both top and lower grades have been at the ceiling. Naturally, no hedges have been put out because futures have been quoted at the same price, which provided no carrying charges, in the main; and this grain has been bought on what we call the flat basis in the country, and naturally had to be sold on the flat basis either by the elevator companies themselves or by a shipper, or by somebody else. And in every case it is offered at price levels to eastern Canada or to the United States which will give, again, the same margin over cost of operation, plus what is called a small profit.

In addition to that there is some risk in connection with the export of grain to the United States. I say that because for the last two years it has been necessary, before a deal could be made for exporting in volume grain to the United States, to pay into what is known as an equalization fund. If grain is sold on the basis of paying so much money into an equalization fund, and then later on it is found that that grain cannot be delivered, there is a certain risk which you might have in selling this grain in the United States, and at more money than would recoup you for the money you put into the fund. That is the only risk in the business at the present time.

BY THE CHAIRMAN:

Q. The business is on exactly the same basis through the wheat board, whether applied to your company or to the line elevators? A. Correct.

Q. That is correct, is it? A. Yes.

BY MR. FILLMORE:

Q. And would you mind explaining to the board the procedure as to the method of operation prior to 1943, before so much grain was delivered to the wheat board.

A. I hope you do not wish me to get too technical.

Q. No, just make it as clear as possible. A. In the early days of the pool, when Canadian Co-operative Wheat Producers Limited were exporting grain ---

Q. Just start with --- A. Since that time, do you mean?

Q. 1931. A. All right. I take it for granted, then, when the whole machinery is operated -- that is, the futures market.

Q. Yes. A. The method is something like this: the agent in a position to have grain to sell will make export offers by cable every afternoon after the market closes. He takes his chance on whether he can hedge or lift his hedge, as the case may be, when the market opens the next day. He may win or he may lose; that is the big risk in exporting under the old system.

Then, there are other things to consider, such as the necessity of securing and purchasing boat space, and buying and again selling sterling, which fluctuates. The whole thing, so far as I can see it as a layman, has always been a risky business. In the exporting of grain, trying to protect yourself against a fluctuating futures market, which cannot give any protection until the market opens the next day -- all this is risky. It might work out on the average throughout the year, but I think it has been agreed, even by men in the grain trade, who have been in the business for a long time, that the

riskiest business in the whole movement on the open market system is the export end of it. I do not know whether that is all you wish to know.

Q. However, your Pool Elevator Company Limited has kept its grain export department in operation all these years. A. Yes, it has.

Q. I should like to ask a few questions about the volume of your export business. I am instructed that, according to your 1943 and 1944 reports, the sales of grain in all positions for export amounted to some 56,498,000 bushels. A. Does that include screenings, and everything else?

Q. Just sales of grain for export. A. That figure is export overseas and to the United States and eastern Canada, is it?

Q. I shall put these figures in as total sales, assumed to be mainly for export.

MR. MILLIKEN: I am wondering what difference it makes, whether it is 30,000,000 or 50,000,000. I should think if Mr. Fillmore asked the witness whether it was a considerable sum, for the purposes of the Commission, that would be sufficient. I see nothing to be gained in getting down to exact figures in this respect.

MR. FILLMORE: Except to show that there is a substantial volume of business transacted in the export department.

MR. MILLIKEN: I think that can be admitted.

THE CHAIRMAN: Will the figures enlighten us very much? I am afraid if we go into too much detail it will take a very long time. However, I do not wish to restrict your examination at all, although we have a great

mass of detail already.

MR. MILLIKEN: We admit it is a considerable volume.

BY MR. FILLMORE:

Q. I am instructed that the sales of grain in all positions in 1943-44 was 56,489,586 bushels. Could you tell me if you think that is approximately correct?

A. I would say it is; if it is in our report it is definitely correct.

BY MR. MILLIKEN:

Q. Just a minute, Mr. Wesson; Mr. Fillmore did not say it was in the directors' report; he said he was instructed that those were the figures. A. I thought he said it was a quotation from our report.

Q. No, he did not say that.

BY MR. FILLMORE:

Q. Has the volume of your export business increased substantially in the last four or five years? A. Increased from when?

Q. From 1938-39, up to date, has there been any increase from year to year? A. Yes, and so has everybody else's increased.

Q. According to your 1943-44 directors' report, the total sales of grain in all positions made by the export department of Pool Elevators Limited up to July, 1944 was 56,489,586; can you say that if that is in the report it is correct? A. If that is in our report it is definitely correct.

Q. Then, I believe you have an office building in Regina; that is, the wheat pool has an office building in Regina, and receives rents -- it is rented to third parties -- from which you receive rent? A. Yes, and we charge ourselves rent, too, to carry the building.

Q. Has the operation of your country elevators by the Wheat Pool Elevators Limited during the past fourteen years involved earnings from handling, storing and cleaning grain in the elevators? A. Yes.

Q. And have you also had earnings from carload lots? A. Yes.

Q. Now, during the past few years, starting we will say in 1940, have there not been huge carry-overs of wheat in Canada? A. That is correct.

Q. And the wheat has even backed up onto the farms, so that for certain periods the farmers were being paid storage on their grain. A. I think the wheat board paid farm storage for one year only.

Q. In 1940; did your Elevator Company, as well as other grain companies build annexes to your country elevators? A. Yes.

Q. So as to take care of the overflow of wheat? A. Yes.

Q. And all available storage space, both in the country and in the terminal elevators was pretty well taken up, right up to the present time. A. Not all through the period. Some has been shipped out. But in the main they have carried a lot of stock in the annexes.

Q. It might be of interest to put in the amount of the carry-over from year to year. I have a statement showing that, and I shall get it out. On September 27, 1943, did the wheat board take over all stocks of grain in store? A. All stocks except stocks on the farms.

Q. I should say all stocks of wheat. A. All stocks of wheat in store, except that on the farms.

Q. And this then became known as crown wheat; that

is the term you used in the trade. A. Yes; that is the class A I dealt with a minute ago, in connection with export business.

Q. Thereafter did the crown pay storage charges on this wheat? A. The wheat board would have to answer that. I presume they would.

Q. Did the wheat board pay --- A. Yes, the wheat board paid it.

Q. The wheat board paid storage charges? A. Yes.

Q. And the wheat board took it over at a certain price, did it? A. Yes.

Q. And did that leave the elevator companies some margin of profit? A. No, I would not say so.

Q. I notice that --- A. It left them without loss; I can put it that way.

Q. According to the report of the United Grain Growers, for 1944, the transfer to the crown of wheat formerly owned by that company was profitable. Would you verify that? A. Yes, I think I can interpret our position something like this, that in the few weeks, or the two or three months prior to the time when the government changed its policy the price of cash wheat was so much higher at the nearby depots that at the end of July most grain organizations inventoried their stocks, which allowed them some margin. What happened was this, as I said a few minutes ago, that it was not at a profit, but that I would say it was taken over without loss, because it merely cancelled out those amounts which might have gone into the earnings of the previous year. I do not know whether that is clear or not.

Q. Thereafter the wheat board paid storage on what is known as crown wheat. A. They were paying on

it before, because the wheat board, on behalf of the crown, took over all wheat board stock, as well as open market stock.

Q. And on the wheat that your elevator company had in store on September 27, 1943, the wheat board paid storages from and after that date? A. Yes, from that time.

Q. Now --- A. And could I add something, that we paid carrying charges, not just storage, because carrying charges include interest on the money that is borrowed to pay to the farmer. So that it is not storage, it is carrying charges.

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Q. That included something for using the space in your elevators, both country and terminal? A. The storage is for the use of the space, but the total charge includes interest on the money.

Q. That is right. Then I think you told us that the elevator companies enter into agreements with the Canadian Wheat Board annually; that is, they have of late years?

A. That is right.

Q. And is it not also a fact that storage, handling and cleaning and drying rates of country and terminal elevators are fixed by the Board of Grain Commissioners?

A. A maximum is fixed. It is not a fixed price; it is a maximum.

Q. And in July of 1944 did you send a representative to the meeting of the Board of Grain Commissioners to consider maximum rates for the year 1944-45? A. Yes, sir.

Q. And was he instructed to ask for a continuation of the present minimum rates? A. At one-sixtieth.

BY THE CHAIRMAN:

Q. What was the rate then? Are you coming to that?

MR. FILLMORE: I will come to that.

Q. That is, the storage rate was one-sixtieth, but your man, I believe, asked for one-fiftieth? A. I could not answer that question.

Q. However, the storage rate was finally fixed at one fifty-fifth of a cent per day? A. Pardon the interruption, but I think you are mixing up two things, the wheat board and the Board of Grain Commissioners?

Q. No, I am talking now about the Board of Grain Commissioners. A. I did not attend that meeting, so

I could not tell you.

Q. I asked if your representative was instructed to ask for a continuation of the present maximum rates during the year 1944-45. A. At one-fiftieth. He probably did, because that is the maximum, and we always charge less.

Q. I do not mean the storage only; I mean also rates for storage, handling, cleaning and drying. Was he instructed to ask for a continuation of the present rates for all those items? A. Oh, yes.

Q. That was in July, 1944. Then in September I believe you decided to make a change in those rates, you and the other three provincial pools? A. The other two provincial pools.

MR. PARKER: Not to make a change; you do not mean that, do you?

BY MR. FILLMORE:

Q. Did you operate under those rates up until October 1, 1944? A. Yes, sir, we did.

Q. Then at a meeting in Regina on September 22 and 23, 1944, was it decided -- I am talking now of a meeting of the Canadian Co-operative Wheat Producers Limited, a meeting of that board -- to recommend to each provincial pool board that it undertake to make a substantial reduction in handling charges on all grain, and that an effort be made to keep the charges as uniform as possible in the three provinces? Subsequently the pools agreed to the following basic rates, to become effective August 1, 1944:

On consigned grain, 1/4 cent instead of 1-3/4 cents; oats, 1/4 cent instead of 1-1/4 cents; barley, 1/4 cent instead of 1-3/4 cents; rye, 1/4 cent instead of 1-3/4 cents; flax, 1 cent instead of 3 cents.

On street grain: flax, 3 cents instead of the wheat board spread of 7-1/2 cents; all other grain, 1 cent instead

of the wheat board spread of 3 cents. The usual commission and sales and service charges were retained. Is that a correct statement of what took place? A. Yes, sir.

THE CHAIRMAN: Let me understand just what that rate covers. Is it the handling charges of the grain?

MR. FILLMORE: That is what it is in here, "a substantial reduction in handling charges."

THE CHAIRMAN: What was the rate at that time, in September, before the item you have just read?

MR. FILLMORE: On consigned grain, that is grain shipped in carload lots --

Q. What do you mean by "consigned grain"? A. That would carry a rate of 1-3/4 cents a bushel on the old rate.

Q. But what is "consigned grain"? Is it grain shipped in carload lots and consigned to -- ? A. Consigned to storage in the carload lot. It would be the same thing as far as that tariff is concerned.

Q. And the handling charge on consigned grain, wheat, was reduced to 1/4 cent from 1-3/4 cents a bushel? That is correct? A. That is correct.

Q. And oats, 1/4 cents instead of 1-1/4 cents?

THE CHAIRMAN: Do I understand that you are suggesting now, Mr. Fillmore, that there was a rate -- I do not care what it was -- in September, 1944, and that what you read was the proposal that these rates be cut?

MR. PARKER: A maximum rate.

MR. FILLMORE: The rate of 1-1/4 cents, for example, was the rate fixed by the Board of Grain Commissioners in July as a maximum rate.

MR. PARKER: These rates were to remain for how long?

MR. FILLMORE: Those were the rates of handling charges

which had been in effect for several years.

THE WITNESS: For a long number of years.

BY MR. FILLMORE:

Q. And on street grain, 3 cents instead of the wheat board spread of 7-1/2 cents. On all other grain, 1 cent instead of the wheat board spread of 3 cents. Those were the two important items, were they not; the last two involved the most money? A. Yes. Of course the flax was reduced to 3 cents, but I think most elevator companies were operating at 5 cents prior to that time, and they were already 2-1/2 cents under the wheat board agreement.

Q. But on street grain -- street grain means wheat bought for cash at the elevator, on cash purchase ticket. That is it, is it not? A. That is the term used.

Q. So that on street grain, that is on wheat and other grains, it is 1 cent instead of the wheat board spread of 3 cents. That meant that for the crop year of 1944 the growers got 2 cents a bushel more than they would have got for street grain if the old rates had remained in effect? A. That is right. I should add that it was made retroactive to August 1 of the same year.

Q. And then after you did that, after the Saskatchewan Pool Elevators Limited reduced those charges, the other two provincial pools reduced their charges accordingly, and I believe the other line elevator companies made similar reductions, after the reductions were made by the pool?

A. The Manitoba and Saskatchewan pools adopted the new policy on the same date. The Alberta pool followed about four or five days later. I cannot tell you when the line companies came down to that rate.

BY THE CHAIRMAN:

Q. What was the object of the reduction? A. I am glad somebody asked that question. The object of this reduction, sir, to use plain farmer language, was this. When we received our financial statement from the previous year, in the month of September, we were ashamed of the surplus; it was too big, and we wanted to operate on a basis where the surplus or the saving part to be issued would be somewhat reasonable.

Q. Were you satisfied at the time that with the reduction you were getting enough to cover the carrying charges? A. We were satisfied at the time, when we made that reduction, that on the basis of our anticipated handle, with the anticipated amount of grain in store that would be carried and storage paid by the wheat board, we would finish the year, as we say in the report, with a substantial saving for distribution. I might say this, sir, that we are very mild in this statement in this brief in connection with the surplus. I cannot think of any miracle which might happen between now and the end of July which would stop us from making a statement very much stronger than the statement in the brief.

Q. But you told us that for many years previously these rates had existed. Were you as ashamed of your surplus in other years as you now say you were? A. No, Mr. Chairman. We had not made these substantial savings in any previous year. I mentioned this morning, in reading the brief, in dealing with the distribution of surpluses, what we have done with the surpluses of previous years, after taking care of our cost of operation, our depreciation reserve, and all our commitments. We found ourselves with \$5,877,000, after

making provision for 3 per cent on the elevator deductions, which represents 4-3/4 cents per bushel on wheat and flax and 4-1/4 on oats, barley and rye. Our board, at this meeting referred to in the report, took the view that the surplus was excessive, and we decided to make the reduction accordingly, because the conditions which we anticipated would carry through this year on the same basis as we had the year before. That is why the reduction was made, sir.

BY MR. ARNASON:

Q. Do you think this 1 cent a bushel, or the rate following this reduction, would enable you to meet your handling charges in the ordinary year, that is considering the average yield of grain over a period of years? A. You mean, Mr. Commissioner, that if all this grain was out of the country, we were merely moving grain through pool elevators and not collecting storage from the wheat board? Do you mean would that be sufficient? No, sir; it definitely would not. I believe the statement was made definitely that this policy was for this year only, and that we would review next year's position when it came to about next July.

BY THE CHAIRMAN:

Q. Did you require the consent of any authority to make that reduction? A. *Yes, of the Board of Grain Commissioners* No, sir. We say in the report *grain* that we are within the jurisdiction of the grain commissioners, using the broad phraseology, but it is within the power of the board to determine what charges shall be made.

Q. Are you speaking now of your board? A. Yes, of our own board.

Q. Was there any control by the Board of Grain Commissioners? A. The control of the Board of Grain Commissioners over the tariffs dealing with the cost of carload

lots, which in the case of wheat was reduced from 1-3/4 cents to 1/4 cent -- the rate of 1-3/4 cents is a maximum charge, and it does not stop anyone from charging less.

Q. You mean you were always under their maximum?

A. We have been collecting their maximum on that basis for many years; and the wheat board agreement of 3 cents flat on the handling of wheat, that was also a maximum. It must be so in connection with flax, because we were not the first group of people to lower the handling charge of flax to 5 cents a bushel, sir.

BY MR. STEER:

Q. Does not section 83 of the Grain Act require the approval of the commissioners? A. For a reduction?

Q. Yes; do you not have to file your tariff? A. We file the maximum, as far as I know.

MR. MILLIKEN: Is it not the case that if you want to change your maximum you have to get approval? I have not looked at the section recently, but that is my recollection.

THE CHAIRMAN: That is what I understood from Mr. Wesson.

BY MR. NADEAU:

Q. How do those reductions compare to your actual cost for those handling charges? A. For the actual service rendered?

Q. No, the actual cost of handling charges. What are they as compared to the reductions you made? Is it possible to compute that? A. You mean to try to determine exactly what it costs to handle wheat through a country elevator?

Q. Yes? A. I would say taking the 1 cent a bushel alone, if there was no other revenue it would not be sufficient to take care of the cost, but there are other revenues, which I am sure will be brought out by learned gentlemen before

we get through.

BY THE CHAIRMAN:

Q. The crop or volume has a good deal to do with that, has it not? A. Oh, yes, sir; and we anticipate a very large volume again this year; larger than last year, as a matter of fact.

Q. Otherwise you might not have made the same reductions? A. That is correct, sir.

BY MR. FILLMORE:

Q. Those handling charges, you say, have been reduced to below cost? A. For the actual services in that particular field; yes.

Q. And you say also it is your policy to reduce charges for just one year, and that it is not contemplated as a permanent policy? A. No, sir.

Q. Not in any event? A. We made that quite clear in the public statement for the year 1944-45. What we will do next year will be different. The rates may be lower yet.

Q. Did you make a speech over the radio on February 27, 1945, which is reported in the Western Producer of March 15, 1945? A. I probably did; I made quite a few. What was it about?

Q. The title is, "Taxation and Co-operatives." That is the heading. Did you deliver it? A. Where was that delivered; in Winnipeg or Regina?

Q. I think you are the one who made the speeches. A. I have made more than one. I just want to know which one it was, that is all.

THE CHAIRMAN: Do you propose holding a speaker literally to his speech?

MR. FILLMORE: I propose to read him part of his speech.

Mr. Wesson

Q. Is the Western Producer your official organ?

A. Yes.

Q. Then you should be able to play with it. A. I want to be able to see which speech it is.

Q. I will point it out to you. A. Yes, sir. This was made over station CJRC in Winnipeg, to assist the Manitoba group in their series of broadcasts. That is my address.

Q. You are reported to have spoken as follows, according to my notes.

MR. MILLIKEN: Why not read it out of the newspaper and then we will be sure how it is reported. I am not questioning your reliability, Mr. Fillmore, but there may be some doubt as to the reliability of your stenographer.

BY MR. FILLMORE:

Q. I will read it to you and you can tell me if you are correctly reported:

"Cooperatives are quite satisfied to do business and render service to their membership side by side with private interests, whether it be as producers or consumers. Quite satisfied for them to make what profits they desire, as long as cooperatives are left alone to pay back to their members the surpluses that do not belong to the cooperative association as an entity, but belong to the individual members who comprise and own it.

"On the other hand, if it is finally decided that these savings are so-called profits, then it is obvious that a co-operative, not interested in making a profit for itself, will not make a profit. The consumers movement on the one hand will be faced with the necessity of changing its selling policy by lowering prices on farm supplies and staples; the producer organizations will make savings for their members

by raising the price of farm products at delivery point or narrowing the margin for service. It is obvious, therefore, that if the cooperatives are left strictly alone the government can still continue to get revenue in taxing profits from private enterprise, but if the cooperatives are not left alone, and are forced to a position where no surplus is shown in the balance sheet at the end of the year, private enterprise must meet its basis of doing business and will have no profit for the government to tax."

Is that correctly reported? A. Yes, sir. That sounds like a better speech than I thought it was.

Q. You had better get me to deliver the next one, then. Do you see any conflict in your explanation as to why you reduced the rates in September, 1944? Do you see any conflict between the reasons you gave for that action, and the statement you made over the radio? A. No, sir, Mr. Chairman; I see no conflict, and neither do I see any connection between the two statements. I say that for this reason. The pool organizations, when they made the reduction and even to-day, are not taxable under the law. The courts may yet have to decide that. Had we been dealing with this question on the basis of my statement over the radio in Winnipeg, the reduction might have been more than 2 cents for the year's crop.

BY THE CHAIRMAN:

Q. Was there any discussion with your competitors before you made these rates? A. No, sir.

Q. There would hardly be any such discussion? A. No, sir.

Q. Had the tax situation anything to do with it?
A. No, sir. It was merely that the earnings were too large.

May I repeat that, because I think this is extremely important. Had we been dealing with the question of income tax -- that is, not wanting to make a profit, as stated in that radio address -- let me say that reduction would have been more than 2 cents last year, because we still anticipate a very substantial surplus for distribution next July. I think that should be made very clear. There is no connection between the reduction of 2 cents and the question of income tax, because we are not taxable -- as yet.

BY MR. FILLMORE:

Q. The situation appears to be that even though you reduced the handling charges to cost or below, Saskatchewan Pool Elevators Limited will make money, will still have earnings?

A. If we reduced them below cost? How could we?

Q. I say that even though handling charges were reduced to cost, Saskatchewan Pool Elevators Limited will still have earnings; in other words, that you could afford to do it?

A. I am not very clear on that question yet.

THE CHAIRMAN: Not on handling charges.

BY MR. FILLMORE:

Q. I understood you to say that if handling charges are kept down to where they are, and even if handling charges are reduced to actual cost, you will still have revenue from other sources, so you can carry on? A. So does everyone else.

Q. I hope they have. By the way, I suppose you do not know whether the whole grain trade was represented at that meeting with the Board of Grain Commissioners in Winnipeg in July, when the maximum rates were fixed? A. I could not answer that. I was not there.

Q. You have mentioned that your company made substantial profits in the year ended July 31, 1944. I am speaking now of

Saskatchewan Pool Elevators Limited. Did the elevator company have the following earnings: gross earnings on grain. Did you have earnings on grain? A. What are you quoting from? I could not tell.

Q. I am looking at one of your audited reports. A. I do not think that document has been filed, Mr. Chairman. I do not propose to answer any questions from it.

THE CHAIRMAN: Mr. Fillmore, I may be very stupid, but I do not quite understand it yet.

Q. Where do the largest part of your surpluses come from, Mr. Wesson? A. They come from a number of sources, Mr. Chairman.

Q. What do you regard as your major source? A. The first revenue is always from the grower himself, who pays a handling charge on the grain. I will trace it for you and give you the main ones. Those farmers who choose to leave the grain and ship it in carload lots have free storage for fifteen days. After fifteen days that farmer will pay the maximum storage that is charged and defined by the Board of Grain Commissioners, or he pays the usual storage charge, and in this case it would have been one-sixtieth of a cent per day.

BY MR. MILLIKEN:

Q. I think what the Chairman wants to know is not these details, but what are the principal items that constitute the revenue which you receive as a company? A. There are only two principal items; that is, the storage paid by the wheat board for carrying this grain -- the storage and carrying charge, which includes interest, and the handling charges paid by the grower. Those are the two main sources of revenue.

BY MR. FILLMORE:

Q. Before 1943, let us say from 1930 to 1935, what were the principal sources of income of the Pool Elevators Limited? A. From 1933 to 1935?

Q. From 1931 to 1935, before the Canadian Wheat Board came into the picture? A. It was not from storage, because grain was not carried to the extent that it has been. Handling charges provided the bigger amount of the revenue paid in by the producer.

Q. Did you not have profits from selling grain? Did you not sell the grain you bought for more than you paid for it? A. Well, in some cases on the open market system that meant carrying charges or storage.

Q. But the Pool Elevators Limited, as you say in your brief, bought grain. From and after July, 1931, you were buying grain, and you were selling on commission? A Yes, sir.

Q. So I take it that what revenue you made came from either buying and selling grain or handling it on commission. Is that correct? A. The two main sources of revenue under that system is, first, the handling charge paid by the grower, plus a price level created which leaves a margin in the distant future for carrying that wheat up to that time. In other words the storage now paid by the wheat board, under the old system was replaced to a very large extent by the difference between the cash price and the distant futures month in which you were hedging. Whether or not that is too technical, I do not know.

BY THE CHAIRMAN:

Q. The same applies to your competitors? A. The same applies to all; yes.

BY MR. FILLMORE:

Q. Just to shorten it, say from 1931 to 1935, until the Canadian Wheat Board came into existence, did Pool Elevators Limited have earnings from handling grain on commission, and from buying and selling grain? A. Yes, sir, of course we did. We had to pay our operating costs from something.

Q. And did you, from 1935 to 1943, have earnings from buying and selling coarse grains? A. I could not say yes to that question, because in 1937 I know that our liquid position was reduced by nearly \$2,000,000, so we did not make anything that year.

Q. I should leave out 1937; you had a loss of over a million dollars in that year? A. Yes, sir.

Q. We should leave that out. The Elevator Company Limited paid that loss, did it, Mr. Wesson? You did not call upon the members to pay that loss? A. It was absorbed from our reserves, commercial reserve and other reserves at the time.

Q. Then except for the year 1937, between 1935 and September, 1943, did the Pool Elevators Company Limited make money through buying and selling coarse grains? A. Coarse grains or anything else, Mr. Chairman; in 1936-37 there was not sufficient volume produced and handled to cover our operating costs and set up any depreciation. In 1937-38 there definitely was not. In 1938-39 there was enough surplus to set up a 1 per cent depreciation only. Those were the three bad years, so we certainly did not make any so-called profit then. The volume was not there.

Q. We will come to the amount of your earnings later,

because you had enough to pay patronage dividends, according to your brief. Except for that one bad year, 1937, did the Elevator Company make money from buying and selling grain?

A. We saved money for our members, sir.

Q. All right; that is what I have been trying to find out. There was a saving, as you call it now. I believe you refer to it in your directors' reports; and in your auditors' statement you have statements of revenue and expense?

A. Yes, sir; that is the auditors' way of doing business.

Q. And the difference between the two is called earnings. That is your own terminology in your own reports: earnings and net earnings, is it not? A. Yes. That is the terminology used by auditors and accountants, but we prefer to call them savings.

Q. And the company as such has net earnings, and has had net earnings from year to year. Is that the case?

A. Yes, except in some years.

Q. Except in 1937. Both the Pool Elevators Limited and the pools have had interest on bonds? You have received interest on large amounts of government bonds? A. Yes, sir, and we have also paid interest for the use of the same money.

Q. You have paid interest to the bank from time to time, but you have received interest on large amounts of government bonds? That is, both the companies have received it?

A. But I want to repeat that those government bonds, the money was borrowed and the equivalent of interest was paid to the bank every day.

Q. We have heard that from every cooperative that has bonds. It always uses the money to pay interest to the banks.

A. In this case it is the exact equivalent. It is not some other interest; it is the exact equivalent.

Q. We will take the case of the wheat pool, for example, which is the parent company. Do you mean to say that the amount of interest received on your dominion and provincial government bonds was exactly the amount that you paid to the bank for interest on borrowed money? A. I mean to say this, that handling the amount of grain we are handling at the present time, all our liquid cash is tied up in those grain stocks, in addition to which we have a very large line of credit. I think this is public knowledge. We have bought substantial blocks of Victory bonds from time to time. Supposing it is a million and a half, as it was the last time. We borrow that million and a half from the banks, and we pay them 3 per cent, the exact equivalent of what the bonds pay us. In other words, we use our credit to underwrite the money at the time the government needs it.

Q. To put it in another way, do you mean you have always borrowed the money from the banks to buy the bonds? A. Yes, sir.

Q. That is just putting it in another way, then. The wheat pool, however, the parent company has had income in the way of dividends from the subsidiary companies, has it not?

A. The wheat pools' only source of revenue is the interest that is paid to it for the use of its commercial reserve. That is the only revenue.

Q. Has the wheat pool had money paid to it every year by Pool Elevators Limited? A. As I have said, for the use of its commercial reserve and other liquid capital.

Q. Just let me put it in my way, then. The wheat pool is a shareholder holding about \$12,000,000 worth of stock in Pool Elevators Limited, and each year the wheat pool has received from Pool Elevators Limited a certain sum of money?

A. Only for the liquid commercial reserve. Not for the elevator deductions. Only for the last two years.

Q. I am only putting it to you that they have got money from the elevator companies? A. I think I should make this clear, if you do not mind, Mr. Chairman. The Elevator Company, for the use of money invested in pool elevators -- and we are all the same people; I think the brief makes that very clear -- if earnings are made to pay interest, as it was for the last two years, to pay interest at 3 per cent, that money is paid; but it is paid by the pool out to the growers who own these certificates. That is a straight saw-off. The other revenue the pool receives direct from the elevator department, or the elevator company, is that if they are using \$6,000,000 of our commercial reserve, liquid cash, liquid funds, to finance the buying and the storing of wheat for the wheat board, and grain, then the elevator company pays to the pool interest in exactly the same way we will pay interest to the banks for money borrowed for exactly the same purpose.

BY THE CHAIRMAN:

Q. While you are on that, have you no element of investment income whatever? You have said your Victory bonds -- and that would be investment income -- balance off with your interest payments? A. Yes, sir.

Q. Have you no element of wholly independent investment income? A. I cannot think of any.

Q. What about the Regina building? Do you rent offices in that building? A. Yes, we rent them to ourselves.

Q. Is that not investment income? A. I think probably it would be; yes.

Q. Is there anything else of that kind? A. I will have to bring you the information. I cannot remember off-hand. I could not answer the question.

BY MR. FILLMORE:

Q. In the year ended July 31, 1944, did Saskatchewan Co-operative Producers Limited receive \$1,107,505.80, which is designated in your books under the heading of income, and secondly, "share of earnings, Saskatchewan Pool Elevators Limited"? A. I would submit that the gentleman is asking me a question from a document which has not yet been filed.

Q. I am not asking you from a document; I am asking you a question. You are the president of the company, and I am asking you if Saskatchewan Co-operative Producers Limited got \$1,107,505.80 out of the earnings of the Pool Elevators Limited? A. Whatever the figure is, that money was turned over to meet the 1929 overpayment, in principal and interest. I would not vouch for the figure, but that is what the money was there for.

Q. Was it paid? A. The Pool Elevators are guarantors of the pool.

Q. Was it paid out in the way of interest to anybody on anything? A. The amount of money you are referring to?

Q. Yes, the \$1,107,505.80 which I am instructed the Saskatchewan Co-operative Producers Limited got from the Elevator Company in the year 1944. Was that paid out by the Saskatchewan Producers Limited to anybody in the way of interest? A. Without dealing with specific figures I would say this, that any money paid over by Saskatchewan Pool Elevators to the Saskatchewan Wheat Pool, apart from interest paid for the use of liquid funds out of the commercial reserve, was turned over to either meet the current payment to the

provincial government or to replace money already paid from the commercial reserve, and I do not propose to go any further into details and figures in that regard.

Q. You have paid, that is the Saskatchewan Wheat Pool has paid, the provincial government over \$7,000,000 principal and over \$7,000,000 interest? A. Yes, sir.

Q. Since 1930? A. Yes, sir. In other words the savings to pool members handling grain through pool elevators has been used to pay their own indebtedness.

Q. You have had a lot of new members since 1930, have you not? A. Yes, sir.

Q. You would not say that any of their savings went to pay the debts of old members? A. Up until 1938 -- I think it is included in this report -- an allocation was made to each grower to reduce his own indebtedness. From 1938 on we changed the policy to what was known as the company loss, for this reason; that taking a cross-section of the whole province, the different municipalities, we found that to all intents and purposes the same people were paying their own debts, almost in the same proportion or on the same basis as they were incurred in regard to deliveries in 1929. To save all kinds of costs in bookkeeping we determined it to be a company loss, and it has been dealt with on that basis since that time. Those new growers or those new members who have joined the organization are fully aware of what the position is. They know when they put grain through the pool elevators that this commitment must be taken care of from savings before they can participate. They know that.

Q. Well, Saskatchewan Co-operative Producers Limited has received money from year to year and from time to time

from these subsidiary companies. Is that not a fact?

A. From pool elevators.

Q. And some small amounts from some other companies?

A. I cannot think of any others.

Q. Then the terminal elevators are operated by Pool Terminals Limited, are they not? A. Yes, sir.

Q. And has Pool Terminals Limited had earnings, both from the export business and from the storing and elevating and cleaning of grain? A. No revenue from export business. We do not export.

Q. Has it had revenue from storing, elevating and cleaning grain? A. Yes, sir.

Q. And the diversion of screenings? A. Yes, sir. Manufacturing screenings, and a lot of other things on which they save money.

Q. Those earnings, then, go to Saskatchewan Pool Elevators Limited? A. That is right, sir.

Q. And eventually go to make up that \$5,800,000 surplus, or whatever you call it, which you had at the end of 1944?

A. That is right, sir.

Q. And is that surplus also made up of some dealing in coal and twine and flour? A. No, sir. We do not deal in coal, twine or flour.

Q. None of your companies? Do any of your companies deal in coal, twine or flour? A. I do not think the other pools do, and I can say definitely we do not. The Federated Co-operatives transact that business in Saskatchewan.

Q. The Pool Elevators Limited, according to their 1943 and 1944 annual reports, have had very large profits from 1925 to July 31, 1944. I am referring to page 52, and I find the following statement, which is No.7:

"Net earnings, total, 1925 to 1944, \$38,952,535."

I presume we can take that to be correct, what we find in your reports? A. Yes.

Q. This further indicates the sum of \$5,877,000 for your 1944 earnings? A. That is right.

Q. Then you use the expression "net earnings" and so forth.

MR. MILLIKEN: Are you referring to the 1943 report?

MR. FILLMORE: Page 65 of the 1944 report.

Q. Those are the earnings of the elevator company only? A. That is right.

Q. The growers, the farmers are not members of Elevator Company Limited, are they? The farmers or growers are members of the wheat pool? A. That is right.

Q. And the wheat pool owns all the shares in the Elevator Company? A. All except 16 qualifying shares for the board of directors.

Q. However, the Elevator Company has been paying patronage dividends, or whatever moneys were distributed from year to year, to the members of the wheat pool?

A. They are all the same people.

Q. Is there anything in your articles of association, or have you anything in writing, whereby the Elevator Company pays money direct to the members of the wheat pool, other than this by-law which was passed in November, 1931? A. I cannot answer that question.

Q. The by-law reads:

"Notwithstanding anything contained in this article, any part of the profits or surplus earnings of the company may be paid or credited to members of the company --"

And so on. Is there any other authority, anything in writing, by virtue of which Saskatchewan Pool Elevators Limited pay money directly to the members of the Saskatchewan Wheat Pool? A. I do not know. The only answer I can give is that all these shares are held in trust by the wheat pool on behalf of its members. I am not a lawyer; I cannot twist all the legal stuff inside out.

Q. Have you anything in writing to show that they are held in trust? A. I could not answer that.

MR. MILLIKEN: There is the growers' contract.

THE CHAIRMAN: While we are dealing with these articles of association of 1931, perhaps I can ask Mr. Milliken how the word "profits" slipped in there.

MR. MILLIKEN: Well, Mr. Chairman, we have adopted the words of our auditors and accountants. It is quite obvious, if you look at our organization, that if we had set it up to avoid the payment of income tax, there would have been different words used.

THE CHAIRMAN: Does the juxtaposition of the words "profits" and "surplus earnings" mean that "surplus earnings" may be taken as a definition of "profits"?

MR. MILLIKEN: No. All we are trying to say is that the excess or overcharge can be refunded on the basis of the volume of business done. For years we carried on without that clause at all. I always had considerable doubt about doing it without the clause, and I had a little doubt about being able to do it just by an article, but I am satisfied that if anyone took us into court to-day they could compel us to pay it under the obligation that we held out for twenty years, that we would pay it. In the wording of that clause we were not thinking about a distinction between profit and surplus

earnings, or anything of the kind. We were not thinking at all about income tax when that was put in there.

MR. ARNASON: You are following to some extent the wording of the Companies Act?

MR. MILLIKEN: That is copied pretty closely; I remember checking it at the time, before I drafted it, with what is in the United Grain Growers Act, passed by the Dominion Government in 1911, and also in the Saskatchewan Co-operative Elevator Companies Act. I remember looking at the wording of both those sections before I drafted it. It was very difficult to get a precedent for it.

BY MR. FILLMORE:

Q. I think it has been brought out already, Mr. Wesson, that the Saskatchewan Pool gets some income from Canadian Pool agencies, and the Pool Insurance Company has paid a so-called patronage dividend to the Pool Elevator Company?

A. Yes. In the last analysis what it does is lower the cost of insurance for the pool organization.

Q. In addition, is the Elevator Company getting rents from the building; and does it also get rents from agents' cottages? A. Yes, sir; not sufficient to pay interest on the money and depreciation, incidentally.

Q. Do you remember how many agents' cottages there are?

A. No, I cannot remember. About 600, I think.

Q. I think I have already asked you, but is there anything other than this by-law of November, 1931; anything else in writing, which deals with the right or obligation of Pool Elevator Company Limited to pay any money to the members of the Saskatchewan Pool? A. I cannot answer that. I know that it has been done since 1925, to the extent of over \$11,000,000 up to the end of last year.

Q. As far as you are aware, you know of no other written authority? A. I could not answer that. It is accepted as custom.

Q. I believe that up to July 31, 1944, you had about 127,000 members of the wheat pool. Would that be about the right number? A. That is approximately the total recorded number.

Q. And have you the form of application?

MR. MILLIKEN: It has been filed with the Commission.

BY MR. FILLMORE:

Q. In order to show how anyone may become a member of the Saskatchewan Pool I will ask you first if the advertisement I am now showing you was put in by your company. It is in the Western Producer of March 26, 1942. A. Yes, sir. I remember it well.

Q. I am just reading this to show how you can become a member of the pool:

"Now take the case of Mr. X. Mr. X is a Saskatchewan farmer. In the 1940-41 crop season Mr. X delivered approximately 9,000 bushels of wheat to pool elevators, but unfortunately Mr. X was not a member of the pool.

"For the crop season 1940-41 Saskatchewan Pool Elevators refunded to patron shareholders excess charges amounting to \$900,000.

"If Mr. X had been a shareholder of Saskatchewan Co-operative Wheat Producers Limited prior to July 31, 1941, his share of the refund would have been \$90 on his 1940-41 deliveries, half of which would have been paid in cash, the balance being used for the purchase of commercial reserve and elevator deduction certificates to be credited to him.

"During the past two crop years, Saskatchewan Pool

Elevators have distributed close to \$1,500,000 to patron shareholders in the form of excess charges refunds.

"If you are not a shareholder, see your nearest pool agent --"

and so on. Can a man become a member of the Saskatchewan Pool by paying \$1 and making an application? A. He must sign an application and send his dollar in with the application to become a member, and then it must be accepted by the wheat pool board.

Q. Say that a farmer wanted to get some part of the distribution which was authorized by your directors last September; say he wanted to get some part of this \$5,800,000. If he has delivered wheat to you at any time since 1935, if he has delivered over 500 bushels of wheat to you at any time since then, could he now share in that distribution if and when it is made? A. If he signed an application before the end of the previous July he is entitled to his share in that year only; not in previous years.

Q. But if he sends in an application now. Supposing a man is not a member, but if he turns in an application now, could he take part in the earnings up to July 31, 1944?

A. No, not 1944; 1945.

Q. It could not relate back? A. No, sir.

Q. According to your brief, Mr. Wesson, you have paid out some \$11,000,000 in patronage dividends? A. Excess charges refund, we call it.

Q. You say, "when surpluses have been available." What do you mean by "surpluses"? Do you mean the net earnings? Do you refer to the net earnings of Pool Elevator Limited?

A. All the surpluses are savings. What is left after the

cost of operation, plus depreciation and the meeting of all commitments becomes surplus for distribution.

Q. They are net earnings while they are in the hands of the elevator company, and they become excess charges refund when the cheques are made out? A. It merely means we have charged our members too much from the time they have delivered the grain, and we are giving them the money back, because we are a non-profit organization.

Q. You say in your brief that most of the earnings, or however it is designated by the company, were paid out in patronage dividends? A. What page is that?

Q. Your brief states:

"The Saskatchewan Wheat Pool, on the other hand, distributes the larger portion of its savings back to its member patrons on the basis of the volume of grain delivered, as a refund of excess handling charges."

A. That is right; and we repeat the same thing in paragraph 22.

Q. Let us start with the year 1930, when you say that the excess charges refund was \$746,118.10. Let me call your attention first to statement No.7, to which I referred before, of your directors' report for 1943-44. You have a heading there: "Distribution of earnings, excess charges refund paid to growers: \$5,447,737."

That is paid.

"Credits to growers; overpayments; accounts, \$2,559,217."

Then you have allocated for distribution on deliveries, season 1941-42, \$1,026,000; allocated for distribution on deliveries, season 1942-43, \$1,800,000, and the figure for 1943-44 is not given. That is a total of \$11,000,000 out of \$31,000,000. You can perhaps look at that during the adjournment, but if you take those tables I think you will see that

you have not by any means paid out all the earnings to patrons.

A. I can answer the question now; I do not need to wait. From 1930 to 1938, all that group of figures which amounts to \$2,550,217.44 --

BY MR. MILLIKEN:

Q. That is not the point Mr. Fillmore is referring to. He is pointing out to you that of the total of \$31,000,000 received, only some \$11,000,000 was paid out in the form of refunds or allocated, and that therefore you have not paid out the greater part of it. That is what Mr. Fillmore is saying to you. There are these items; and have you not paid on principal and interest on the government debt, in addition to those items? A. That is what I was coming to. At that time this \$2,550,000 represented the full amount of the principal of the overpayment, and this money was credited to those growers who had an overpayment, to reduce their indebtedness, in other words they were paying their own debt. The balance of the question was answered by Mr. Milliken.

BY MR. FILLMORE:

Q. Then just look at your patronage dividends for a moment. You say the surplus for the years 1932 to 1938 was distributed on the basis of the volume of business done over that period, for each period of twelve months? A. That is right.

Q. And that amount was \$2,849,283? A. The figure is \$2,559,217.

Q. And that was applied against the 1929-30 overpayment? A. That is right.

Q. Then there was a balance of \$209,000 on elevator deduction reserve certificates? A. That belonged to the

growers who had already more than paid the overpayment, and the money was used to give them an additional equity in the organization.

Q. Do you know what your net earnings were, or what was the income of Saskatchewan Pool Elevators Company Limited from 1932 to 1938? A. No, I have not that in front of me.

Q. Then let us start with 1939-40. You say that you paid patronage dividends in 1940 of \$500,000, according to your statement? A. I think that is right.

Q. Was that applied half cash and the balance in elevator reserve deduction certificates? A. Yes, sir.

Q. During the fiscal year 1940-41; but does not your statement show that your net earnings for that same period were \$2,671,387? A. I have not the figures, but I am quite sure in that particular year we set up a considerable amount of money in reserve to replace the huge loss in 1937-38, which we were entitled to do, according to the letters we received from the Income Tax Department, which authorized us to set up a reserve.

Q. According to that you did not pay even half of your net earnings of the elevator company to patrons; and then out of that amount, which was less than half, you paid one-half in cash and the balance in elevator reserve deductions? A. That is right.

Q. So that would not be paying most of your earnings to the patrons, would it? A. That applied in 1940 and 1941, both. We were trying to recoup ourselves from the losses of 1937, and build up the reserve.

Q. No doubt you had a good reason for it, but I am pointing out that you were not distributing the net earnings in cash among the patrons of the wheat pool. A. Yes, that

is correct; but I would like to make this position clear. While there may be plenty of legal argument as to what you should do and what you should not do, the fact remains that our delegates who represent the shareholders deal with these figures. Looking back to 1938, when we saw our liquid position depleted by almost \$2,000,000, and realizing that we had to have at least enough money in what is known as the contingent reserve to take care of such years as 1937, and not knowing when it would be repeated, they decided in their own wisdom, representing the growers in the country, that we should retain a substantial sum in the interest of maintaining a strong financial organization, rendering service to the growers in the future; and it was because of that decision that in that year and the year following a substantial amount was put into what is known as the elevator reserve, which we believed we had every right to do under section 4(p) of the Income War Tax Act, and on the basis of the letters which were referred to in our statement. Since that time that fund has not been augmented, and in all these years the money has been pretty well paid to the growers.

BY THE CHAIRMAN:

Q. What I understood Mr. Fillmore to be asking you was, do you reconcile that position absolutely with cooperative principles? A. Yes, sir, we do.

THE CHAIRMAN: Was that the point?

MR. FILLMORE: Yes, my Lord. I am trying to point out that they have not distributed cash amongst the growers --

MR. MILLIKEN: If you can find those words in the brief, read them. We have carefully pointed out how we distributed this money, and at the request of Mr. Parker I had the witness

explain how it was done other than in cash. We do not say any place that they were all distributed in cash.

MR. FILLMORE: I took those words from page 3 of the brief:

"The Saskatchewan Pool, on the other hand, distributes the larger portion of its savings back to its member patrons on the basis of the volume of grain delivered, as a refund of excess handling charges."

MR. MILLIKEN: And it has always taken care of what it considers its necessary reserves. But it does not say anywhere that these refunds are made in cash.

THE CHAIRMAN: I think we will adjourn at this point and resume at 10 o'clock to-morrow.

---Whereupon the Commission adjourned to meet again on Tuesday, April 24, 1945, at 10 a.m.

R.
II

Canada, Constitution, Roy Comm. No.

ROYAL COMMISSION
ON
CO-OPERATIVES

1945

PROCEEDINGS
(OFFICIAL REPORT)

VOLUME No. XXV

PLACE Ottawa

DATE April 24, 1945

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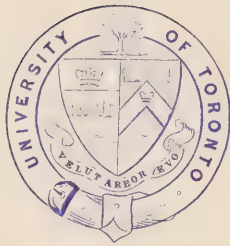


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ROYAL COMMISSION ON CO-OPERATIVES

Ottawa, Tuesday, April 24, 1945.

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ROYAL COMMISSION ON CO-OPERATIVES

The Commission appointed to inquire into the present position of cooperatives in the matter of income and excess profits tax, organization and business methods and operations, and the comparative position of persons engaged in business directly competitive therewith, met in Ottawa, on Tuesday, April 24, 1945.

PRESENT:

The Hon. Mr. Justice ERROL M. McDOUGALL, Chairman

B. N. ARNASON	}	Commissioners
G. A. ELLIOTT		
J. M. NADEAU		
J. J. VAUGHAN		

Eugene T. Parker, K.C.	Counsel
Roger Brossard,	Associate Counsel

Major H. D. Woods	}	Associate Registrars
J. A. Chapdelaine		

Colonel G. W. Ross	Executive Secretary
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APPEARANCES:

R. H. Milliken, K.C.	Saskatchewan Co-operative Producers Limited, (Saskatchewan Wheat Pool)	
C. G. Heward, K.C.	}	Canadian National Millers Association; Ontario Flour Millers Association
C. H. G. Short		
M. M. Porter	}	Alberta Wheat Pool " " "
Ben S. Plumer		
H. S. Scarth	}	Manitoba Pool Elevators " " "
W. J. Parker		
George Church	President, United Farmers of Alberta	
G. H. Steer	}	United Grain Growers Limited " " " "
H. L. Griffin		
J. E. Brownlee		
W. H. Howard, K.C.	}	Northwest Line Elevators " " "
Cecil Lamont		
W. P. Fillmore		

Ottawa,
Tuesday,
April 24, 1945.

The Commission met at 10 a.m., Mr. Justice McDougall presiding.

JOHN H. WESSON, examination continued.

MR. MILLIKEN: Before Mr. Fillmore continues, I would like to make a correction in yesterday's evidence, at page 6697. Discussing the reduction in the rates which the pool elevators put in last fall you, sir, down near the bottom of the page, asked the witness if they had to get the consent of anyone to make that reduction, and the answer is "No, sir". Mr. Steer was good enough to draw our attention to section 83 of the Canada Grain Act -- I had not read it when he drew my attention to it -- which provides that, in respect of any change, notice must be given the Board of Grain Commissioners three days before it goes into effect. Last evening I had a copy of the letter written by the manager of the pool elevators to the Board of Grain Commissioners notifying them of the change in accordance with section 83. That is correct, Mr. Wesson, is it not?

THE WITNESS: I am very sorry, I did not follow the question. I was looking at something else at the moment.

MR. MILLIKEN: I was asking you if it was correct that your company did notify the Board of Grain Commissioners, in accordance with section 83 of the Canada Grain Act, before they lowered the rates last fall.

THE WITNESS: I thought I had said "I don't know", but apparently I said "no". I should have said I don't know.

MR. MILLIKEN: You will find it on page 6697 away down the page. The answer is "No, sir", and it should be yes.

THE WITNESS: The answer should have been, I don't know, because I didn't.

BY MR. FILLMORE:

Q. We were dealing with the 1940-41 patronage dividend which you show as \$900,000 and we show a little larger. However, was not that dividend for the season 1941-42 on the basis of wheat 2 cents a bushel, flax $1\frac{1}{2}$ cents a bushel, oats, barley and rye 1 cent a bushel, half cash and the balance in elevator reserves deduction certificates during the fiscal year 1942-43? A. Yes; that is correct.

Q. The elevator company's earnings for the year ended July 31, 1941, according to the directors' report, appears to be \$2,135,031? A. In that year we set up a reserve to replace the loss I mentioned yesterday from 1937, which we had every right to do, as we understood, under section 4(p).

Q. I am bringing out the amount of net earnings of the elevator company as shown by the directors' report. For the year 1942-43 you show patronage dividends of \$1,030,000 and our calculations show \$1,739,303. I will not go into the discrepancy there; I will mention it in a moment. However, was this the basis: wheat and flax 2 cents a bushel, oats, barley and rye $1\frac{1}{2}$ cents a bushel, payable $\frac{1}{2}$ cent a bushel in elevator reserve deduction certificates, the balance in cash, during the fiscal year 1943-44.

MR. MILLIKEN: If Mr. Wesson has not the figures before him I do not know how he can be asked to say whether that is the basis.

MR. FILLMORE: I am instructed -- however, I will not press it. I understand the Commission has the directors' reports, and I think that appears at page 52.

MR. MILLIKEN: We also have a complete and detailed

statement, in respect of each class of grain, how much per bushel these patronage dividends were; but it is not possible for the witness to remember the figures.

BY MR. FILLMORE:

Q. At any rate, that is where the information will be found. Then for the year ended 1943-44, I believe you declared a patronage dividend, already stated, of \$5,877,331.45?

A. That is right.

Q. That was on the basis, wheat and flax $4\frac{3}{4}$ cents and oats, barley and rye $4\frac{1}{4}$ cents, $\frac{1}{2}$ cent a bushel cash, balance in elevator reserves, deduction certificates?

A. Will you repeat that?

Q. One-half cent a bushel in cash and the balance in elevator reserves, deduction certificates? A. That is not correct. One-half cent a bushel is to be used for the purchase of deductions from reserves, from estates and others to the credit of the new members. The balance, at the rate of $4\frac{1}{4}$ and $3\frac{3}{4}$ respectively, is set up, or being now set up as a credit to those who delivered and will remain there subject to the final position of the income tax question being settled. If it is finally settled that we are non-taxable, then naturally the money will be paid to the growers on the basis of the records.

Q. However, your declaration of dividends does provide for the disposition one way or another of -- A. Of the full amount.

Q. The full amount of the net profit? A. After 3 per cent interest on elevator deductions.

Q. And that is the first year in which you did dispose of -- or rather in which your declaration as to patronage dividends covered the net earnings of the elevator company?

A. Yes. Might I explain that, as regards the previous year, 1942-43, and the \$1,800,000 which you referred to as having been set up, we put at that time into undivided surplus \$1,122,000 and it was put there for exactly the same reason, until the whole income tax question was settled. The record is still there for the money to be paid.

MR. MILLIKEN: In order to be sure that Mr. Wesson understands the question Mr. Fillmore asked, if that was the first year he had ever declared all surplus earnings as patronage dividend, that takes you back to 1926.

MR. FILLMORE: I will amend the question and say since 1931.

THE WITNESS: That is correct, since 1931.

MR. FILLMORE: Now, Mr. Chairman, we have made some calculations in our brief as to the net earnings on the patronage dividends and as to the amount paid from year to year by the elevator company out of its earnings to the wheat pool.

MR. MILLIKEN: Where do you say that is -- in your brief?

MR. FILLMORE: I say, in our brief, in the schedule to our brief. There are some calculations there --

MR. MILLIKEN: But we have not got your brief before the Commission at the present time.

MR. FILLMORE: I will not refer to it then.

THE CHAIRMAN: I assume that what Mr. Fillmore is doing is making such proof for his brief as he can now instead of calling the witness back.

MR. FILLMORE: That is all I have in mind.

MR. MILLIKEN: The best proof of the earnings will be found in the company's own records. You have its audited

statements for the past ten years. Why Mr. Fillmore should come with figures he has made up -- we do not know how he has made them up -- and undertake to prove that our figures are not correct, I do not know.

THE CHAIRMAN: I do not know any more than you do, Mr. Milliken, but I do see what he is trying to do. He is trying to prove a fact in his brief. How better can he prove it than out of the mouth of the manager of the company?

MR. MILLIKEN: He can do so when he is proving his brief; but he is producing figures and undertaking to show that the figures of the pool are wrong.

MR. FILLMORE: Mr. Milliken is away ahead of me. I will not ask the witness for what he thinks I am going to ask for.

MR. MILLIKEN: I am rather at a loss to know why this brief of yours should be brought in now.

MR. FILLMORE: You have not heard the whole of my statement. If you will allow me to continue you can make your objection. Our accountant has prepared a statement showing the net earnings of the elevator company, with certain adjustments, but this should be made showing the amounts paid out of the earnings of the elevator company.

MR. PARKER: Whose accountant -- yours?

MR. FILLMORE: Yes. And this statement contains page references in the directors' reports of the Saskatchewan Wheat Pool, so that I think the evidence is before the Commission, if our accountant can demonstrate it. I will give to the Commission accountant and make available to Mr. Milliken the working papers so that any evidence we may give can be checked perhaps in advance to save time. That is all.

THE CHAIRMAN: It is just a collation of material.

MR. MILLIKEN: This brings up a question that bothers me a great deal with this Commission and with the evidence of our client. We are before the Exchequer Court and we have the right, under the provisions of the Income Tax Act, to have our case heard in camera before that court. We have decided that it shall be heard in camera. We had a witness for the Canadian Chamber of Commerce who stated that he went to the Exchequer Court to get information about our company and was refused it. You are not desirous, Mr. Chairman, of putting us in the position where all the benefit we derive from the fact of our being heard in camera will be thrown away by reason of the fact that there is a commission looking into our affairs. We are prepared to give this Commission all the information they can ask for with reference to our organization. We are ready at any time to submit everything to you, but we are not prepared to have a public cross-examination into our affairs which will deprive us of all the benefit or advantage we have, and which we have the right to enjoy, under the Income Tax Act in connection with the hearing of our case. And what Mr. Fillmore is now doing will deprive us of that benefit or advantage which we have in connection with the hearing of our case in the Exchequer Court.

THE CHAIRMAN: I do not understand it that way, Mr. Milliken.

MR. MILLIKEN: I do not see what other result will follow.

THE CHAIRMAN: Mr. Fillmore is producing a document with references to an exhibit already before the Commission.

MR. MILLIKEN: I assume that this is what he is referring to, this statement prepared by their own accountants. They show in their brief certain figures that do not agree with some of the figures in ours. There may be an explanation to account for the disagreement; I do not know. But we have Mr. Fillmore coming with a brief of 30 or 40 pages and stating that he does not know whether something is true or not but if you ask our officials they will tell you.

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That is not the way to put evidence before the Commission and I object to any of our officials being used for the purpose of proving a brief, some portion of which Mr. Fillmore cannot say is true or not. He does not know whether it is correct or false.

THE CHAIRMAN: That is a little broad. I have not seen the document to which Mr. Fillmore refers, but I understand it is merely a matter of references to annual statements which are public. There is no harm in that.

MR. MILLIKEN: What he regards as public statements are our directors' reports, which go to the shareholders. They are not public statements.

THE CHAIRMAN: They are public.

MR. MILLIKEN: If they go to the shareholders?

THE CHAIRMAN: Yes.

MR. MILLIKEN: How can I get a copy of the annual statement of some other grain company merely because they send it to their shareholders? That does not make it a public document.

THE CHAIRMAN: I understand it would be available to you in the ordinary course.

MR. MILLIKEN: I would like to know how I could get it. In the course of this brief they say: "We shall necessarily make statements of fact in support of our representations"; and they go on to say: "You may be assured, however, that all the facts alleged by us are to the best of our knowledge and belief true, and to the extent that they relate to co-operatives engaged in the operation of grain elevators readily provable by the testimony of officers or employees of the cooperatives concerned." I object to our officers

and employees being called to prove a brief of somebody who does not know whether what he says is true or false.

THE CHAIRMAN: Let us get it straight, Mr. Milliken. We are here to find facts and are not particularly interested in what any cross-examination, so-called, may be. We have all the necessary documents and all that Mr. Fillmore is doing is to indicate to us the parts of these documents to which he is referring.

MR. MILLIKEN: If that is all, I have no objection; but he is going to ask the witness certain questions.

THE CHAIRMAN: He has not asked the witness anything yet.

MR. MILLIKEN: If all he does is to refer to the documents, I have no objection.

THE CHAIRMAN: I have not seen it yet.

MR. MILLIKEN: He is cross-examining the witness.

THE CHAIRMAN: He is making a statement to the Commission.

MR. MILLIKEN: Yes, in the course of his cross-examination.

THE CHAIRMAN: That has been done on numerous occasions by practically every counsel.

MR. MILLIKEN: If that is all, I have no objection.

MR. PORTER: I might refer to this matter, Mr. Chairman, inasmuch as it is likely to arise again. The harm is done and I cannot undo it, but it may arise when my case comes up. When I was asked for the statements which have since been filed confidentially with your Commission, I wrote a letter to Mr. Parker asking the purpose for which they were being presented and inquiring whether like statements were to be obtainable from others. We have no objection in the world to producing for the Commission's information any statements

or facts, but if these facts are to be used, even by reference, as Mr. Fillmore now proposes, then I suggest that like statements should be available from those with whom it is the Commission's duty to compare the result of this cooperative competition. I am sorry my learned friend is interjecting this at this time because I have had an opportunity to go over his brief and I see his approach completely. At that time we would have had a footing to say, "That is your criticism. You allege that it is putting you out of business. Now let us see the material which you say proves that result." I myself think that the material asked from us must of necessity come from my learned friend's clients if the Commission is to make a comparison of the position in relation to taxation in the case of a person engaged in any line of business in direct competition. I do not wish to anticipate my learned friend's position, but you will have allegations that this competition is putting them out of business, and until you examine those statements it will not be possible for the Commission to resolve the issue. I rise at this time because I do not want something to be done by the back door that cannot be done by the front door.

THE CHAIRMAN: We have already dealt with that question on other occasions and it is the attitude of the Commission -- and we are unanimous in this -- that the private dealings of various companies involved, cooperative or otherwise, are not to be exposed publicly before this tribunal. What we get from the various interests is confidential to the Commission. That has been made clear.

MR. PORTER: Perhaps I have not made myself clear. I

have no desire to get at my learned friend's figures, but I do want to suggest that they ought to be available to the Commission.

THE CHAIRMAN: But they are.

MR. PORTER: If they are, then I have nothing more to say.

THE CHAIRMAN: Where do we stand now? I have not seen the document.

MR. FILLMORE: My only purpose is that it may be a matter of convenience for the accountant.

THE CHAIRMAN: This is not a question you are putting to the witness but a statement to the Commission?

THE WITNESS: Thank you, sir. I have been waiting a long time to hear that.

MR. FILLMORE: The point may arise when we put in something in support of our brief, but now all I am suggesting is that we have here a prepared statement. We have taken figures from the annual reports of the Saskatchewan --

MR. PARKER: I should think it would be better for my learned friend to defer this until such time as he puts in his own brief. I do not see the point of interjecting it here.

THE CHAIRMAN: Unless it is proposed to ask the witness a question, I do not see the relevancy of that statement now, Mr. Fillmore.

MR. FILLMORE: I was only giving them a chance to check in advance.

MR. PARKER: If you are anxious to do that, pass it over to the other counsel and let them do the checking. Why mention it now?

THE CHAIRMAN: We might dispense with that at the moment, Mr. Fillmore.

MR. FILLMORE: Very well, Mr. Chairman. If Mr. Milliken wants to check it he can do so.

MR. MILLIKEN: I do not want to check it but if you want me to see it you will have to submit it to me.

MR. FILLMORE: I am tendering it now.

THE CHAIRMAN: Now that the waves have subsided we will go on.

BY MR. FILLMORE:

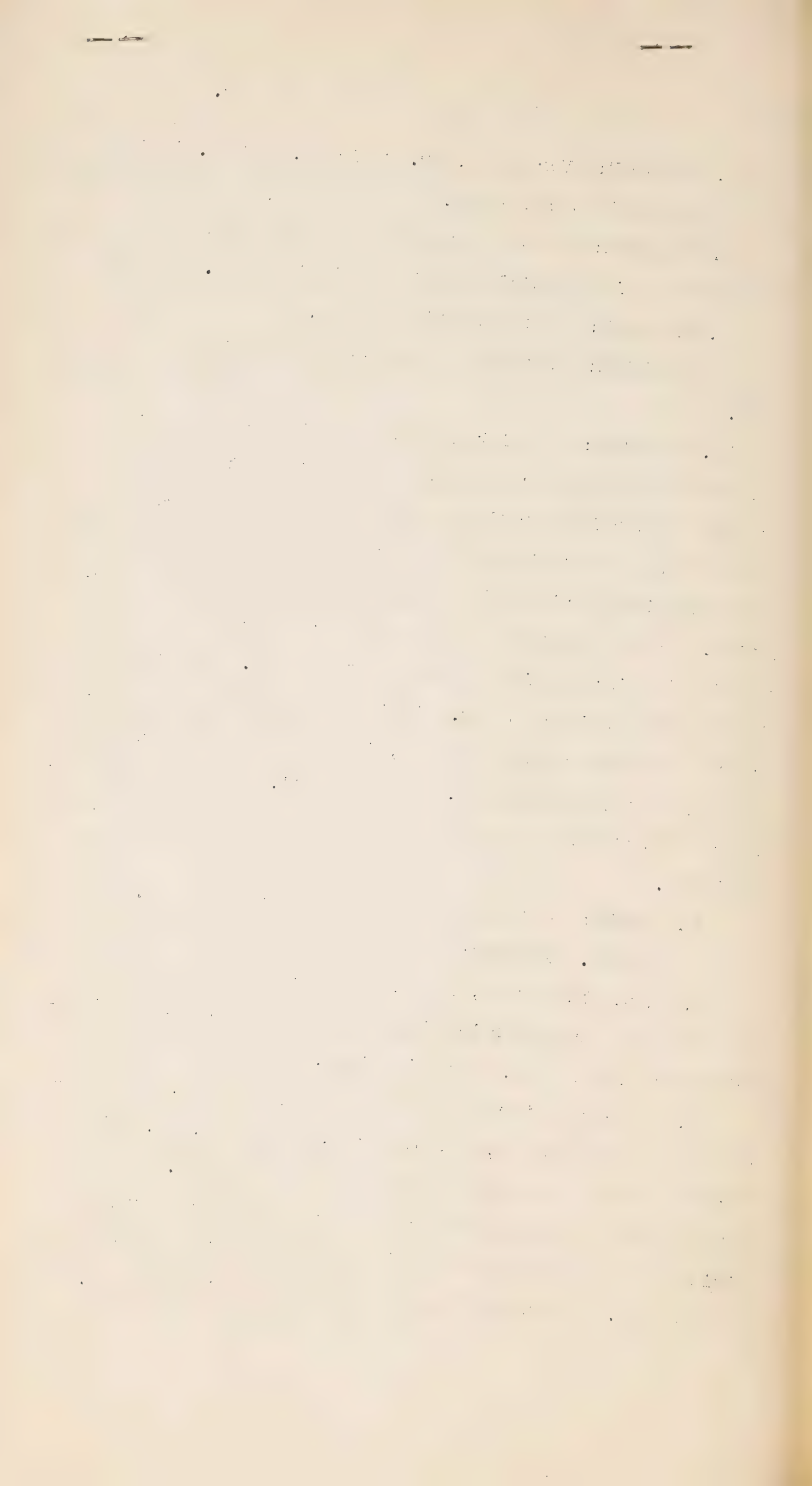
Q. Now, Mr. Wesson, I believe your reports show that you have had a considerable increase in membership, particularly since 1940? A. That is right.

Q. Your directors' report for 1944, page 28, shows increases as follows: 3,024; 4,700; 3,800; and 5,300. These increases have taken place in the last five years. Do you not think that the payment or the declaration of patronage dividends is an inducement to the growers to join your association? A. I would say that in some cases it would be.

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Q. We have already dealt with the huge carry-overs of grain and I think the figures are available in your annual reports. In your last report you give the amount of grain carry-over. I think it is on page 33 and you also state that your elevators were full at the beginning of 1944. Is that correct? A. Yes, sir. I can answer that without looking at the report.

Q. So that up to date all elevator companies have been occupied to capacity, I take it, by the huge carry-overs of wheat and other grain? A. Generally speaking, yes.

Q. Do you think that when we return to normal and wheat in the fall can be moved as it was in the years prior to 1940, with competition you will then be able to handle more grain and put more grain through the elevators? Is that likely?

A. The answer to that would be that I hope we will be able to handle all members' grain which we are not able to at the present time.

Q. And would it not be a fair deduction that competition will be more severe and that your ability to pay the extra half cent or cent or more per bushel would be something to induce growers to deal with you rather than with the line elevator companies at competing points? A. I would like to say that we do not lay down our policy on the basis of competition at all. We lay down our policy to give service to the membership on a fair basis.

Q. Is it not likely that your declared policy will attract business? If you can pay more per bushel than your competitors, are you not going to get more business? A. I would not say so. I presume you are referring to the 2 cents reduction last October.

Q. Put it this way. If you should continue that policy in other years, is it not likely that your competitors will either have to meet the price or lose business? Would that be a fair way to put it? A. You might be right, if they did not meet the price and provided the volume could be handled. Everything depends on volume, capacity and space.

Q. One question about interest in your brief on page 13. What is the page dealing with interest?

MR. MILLIKEN: Interest on what?

MR. FILLMORE: Interest paid.

MR. MILLIKEN: On deductions?

MR. FILLMORE: Yes.

MR. NADEAU: It is page 14.

BY MR. FILLMORE:

Q. Beginning at the top of page 15. Beginning with the year 1931, up to and including the year 1942, no interest was paid. For the years 1943 and 1944 interest has been declared at the rate of 3 per cent. Has that interest been paid or only declared? A. In 1943 and 1944? Are those the two years you refer to?

Q. In your brief, at the top of page 15, you say that for the years 1943 and 1944 interest has been declared at the rate of 3 per cent. I asked whether that has been paid.

A. It was paid in 1943 and cheques went out for this year on the 1st of April or maybe the 1st of May. I am not sure of the date. If it is not paid it will be paid in the very near future.

Q. At the bottom of page 14 you say that interest was paid on elevator deductions at the rate of 6 per cent up to 1930. Was interest paid on commercial reserves or only on elevator reserves? A. In those early years some interest

was paid on commercial reserves too.

Q. Do you remember the last year in which interest was paid on commercial reserves and the rate at which it was paid? A. I don't remember. I think it would be 5 per cent.

Q. You don't remember the last year? A. No. It would be prior to 1928.

Q. One other question about the export division. Prior to 1943 did your export department buy grain from other pools and also from the line elevator companies for the purpose of export or resale? A. Yes. That is necessary in any export business because -- I will have to stand up to say this. I want to emphasize this because there is a point behind it. It has been stated on numerous occasions by those in the export business that the pools going out and buying grain to export are making a profit because they are not handling grain belonging to their own members. We take the view that because the grain loses identity immediately it is loaded into country elevators, being represented by certificates, tickets and government inspection certificates right through the terminals, any company trying to do its share of exporting 80 per cent of the grain produced in this country must have the advantage of every opportunity of switching its paper with stocks which may be available to them. That is my understanding of the reason why the clearing house association was set up. You asked me a question yesterday, whether our export volume last year was 56,000,000 bushels. I could not remember the figure, but I admitted that if it was in the report it was correct. We take the view that if we handle 140,000,000 bushels of grain, as long as we export less than what we handle we are handling grain belonging to our members, or its equivalent. If, however, we handled

100,000,000 bushels and exported 110,000,000, I would agree with you that we were handling business which was none of our concern.

Q. You say your own grain or its equivalent. By "equivalent" you mean that, in order to make up your shipments, you do buy grain from the line elevator companies?

A. And we sell, sir.

Q. And you also buy from the wheat board wheat which may come from any other source? A. Everyone does that now, sir.

Q. So that although the quantity you export may be less than the total handled through the country elevators, the origin of the grain which you export may be elevators other than your own? A. That is quite possible.

Q. One other question about patronage dividends. I think you have already mentioned that it has been on a bushel basis and for wheat there is no distinction between grades? A. That is right.

Q. One question about operating country elevators. Is it possible that in a certain year you might lose money on low grade wheat and make on high grades of wheat, or vice versa? A. All depending on fluctuations in premiums and discounts according to grades, yes.

Q. Depending on the conditions existing at the time, you might lose money on low grades of wheat and make money on high grades? A. That is right.

Q. And at other times the reverse might be the case? A. That is right.

Q. It would appear clear, then, that notwithstanding the grade of his crop, any farmer who delivered wheat would

get the dividend at the stated rate per bushel? A. Yes. I would like to explain that. In the days when we were pooling wheat every grade was a pool in itself. I understand the same system is now being practised by the wheat board, but in pooling our savings ^{of} for distribution in the pool elevators there is not a pool, savings for each grade. The pool of savings is in each class of grain. There may be a loss or a gain on different grades of wheat, but that will go into one pool for distribution, one for wheat, one for flax, one for oats, barley and rye, and so on. That is the distinction in the method of making advance payments in the pooling of grain. There is a pool for each grade, but in operating elevators there is a pool of savings for each class of grain and not grade.

Q. To review one feature of the examination, would it not appear, then, that a smaller portion of the earnings of the elevator company has gone out in the way of cash patronage dividends? It is not the larger portion, it is the smaller portion of patronage dividends that have gone out in cash? A. That would be true in 1942 and 1943 because $1\frac{1}{2}$ cents was paid in cash and $\frac{1}{2}$ cent set up to purchase reserves.

MR. MILLIKEN: How many years, Mr. Fillmore -- going back to 1926?

MR. FILLMORE: Going back to 1930. However, I will not press that question. It is a matter that appears from the reports. Would this be a fair statement: that that part of the earnings retained by the Saskatchewan Elevator Company Limited has gone into the purchase of reserves, into working capital to the parent company, the wheat pool, and out of working capital you have bought elevators, country

and terminal elevators since 1931? A. Speaking from memory, the last money that was put into reserves was in 1941 and no money has been put into general reserve since. We do not require it, sir.

I will not press it, because it appears from statement No.7 in the last two annual reports.

MR. MILLIKEN: All I wish to be sure about is that you and I are talking about the same thing. You have included in the list you have just read the purchase of the reserves. Did you mean the purchase of reserves other than patronage dividends?

MR. FILLMORE: I meant that the earnings of the Elevator Company which are not paid out in cash in patronage dividends have gone into the purchase, first of elevator reserves from members.

MR. MILLIKEN: But the only moneys that are used to purchase reserves are part of the patronage dividends, and not the undistributed part.

MR. FILLMORE: Yes.

THE CHAIRMAN: Mr. Wesson said that, I think.

MR. FILLMORE: Part of the patronage dividends goes to the purchase of reserves.

MR. MILLIKEN: Yes.

BY MR. FILLMORE:

Q. And out of the rest of the net earnings retained by the Elevator Company they give some money to the wheat pool, the parent company. A. That is under an agreement, a joint guarantee that ---

Q. I know. A. That is under an agreement, a joint guarantee between the parent organization and the pool elevators with the provincial government. We did not agree to the policy years ago where we should ask the grower to pay his debt. We agreed that the earnings from the pool elevators which carry part of the guarantee should be used on behalf of the membership to pay the debt. The pool itself is the original, the principal

debtor. When the money is paid it is paid to the government by the pool, and not by the pool elevators. And on the record it must show that money was paid from pool elevators for payment to the government.

Q. Then, thirdly, out of the net earnings of the Elevator Company have been provided working capital and funds with which to buy country and two terminal elevators.

A. No. Any expansion we have made since we ceased taking deductions has been made from depreciation reserve, and no other.

Q. Depreciation reserves, Mr. Wesson -- that is just bookkeeping, is it not? A. No, it is not just bookkeeping. I must explain it. Depreciation reserve, as I understand it as a layman, is that depreciation at 5 per cent in country elevators and 3 per cent in terminals is set up each year from earnings to take care of annual depreciation or obsolescence of the plant. And to the extent that you make liquid your original investment -- speaking from memory, our depreciation reserve every year amounts to about \$1,100,000. What we have done is this: we have reinvested these depreciation reserves in other assets, which has at once lowered the liquid fund, and has automatically increased again the value of your fixed assets. So that when I say that we have expanded with the reinvestment of our depreciation reserves, I am making a statement of fact.

Q. Then, to boil it down, we can say that each year the company has net earnings, and I would say each year the Elevator Company has had net earnings. Each year the Elevator Company has had earnings, and the money to pay has to come out of your bank account, does it not? You have increased your liquid position each year by the

money you have made, and on that money you have been able to buy elevators? A. Yes. Could I make a further statement?

Q. Yes. A. Yesterday counsel led up to a question of what money had been loaned to the pool elevators in connection with one of our terminals. I thought at the time he was coming back to ask me if that had ever been replaced. Let me say now that that money was all repaid back to the commercial reserve of the wheat pool from the depreciation reserve set up each year by the Saskatchewan pool elevators and pool terminals. Depreciation and reserve was reinvested. It increased the value of the capital invested and automatically to the same extent lowered the value of the liquid.

Q. Your fixed assets have increased, and at the expense of liquid assets. A. To the extent of your purchases, yes.

Q. Then, when money is paid by Pool Elevators Company Limited to the wheat pool, the parent company, it has paid principal and interest to the Saskatchewan government? A. Correct.

Q. And also paid money in reduction of the operating expenses of the 1930-31 pool? A. That is correct.

Q. Does that refer to the 18 cents per bushel, liability for which the company carries in its ---
A. It has no connection whatsoever.

Q. What is meant by operating expenses of the 1930-31 pool? A. I do not know that this would be of any interest to the Commission, but maybe I had better explain it.

Q. Yes, go ahead. A. In 1931, at the time the wheat pool ceased to function as a pooling organization

to the contract, most people were in difficulty because of the low price of wheat. We could not continue pooling. The best we could offer to our people would be 35 cents a bushel, basis Fort William, and no farmer could continue business on that basis. Most of you will remember that from 1931, after the time the pools had taken a huge loss amounting to about \$22,000,000, the government of this country took over all responsibility of grain marketing, and they chose under the government of the day--that was the government of the Rt. Hon. R.B. Bennett--and under the managership of John I. McFarland, to stabilize the speculative market. I cannot remember the figures, but we had a substantial carryover unsold. That carryover unsold until 1935 was part of the buffer.

BY THE CHAIRMAN:

Q. Part of what? A. Part of the buffer, or part of the attempt to stabilize. In other words, it was not sold. And in addition to that, purchases were augmented at different times by hundreds of millions of bushels of futures to maintain some semblance of stabilization. When it came to 1935 the Wheat Board Act was passed and an arrangement was made under which the new wheat board would take over all stocks and contracts held by Canadian Co-operative Wheat Producers Limited at that time. This was done. We thought--and when I say "we" I mean the pools--that when we had made an amicable settlement with the government -- by order in council they agreed to pay us in lieu of these earnings taken over a sum in the amount of \$8,250,000 to give us sufficient money to equalize payments up to the highest -- it was 60 cents for wheat. Some of our growers had only had 50 cents. It was to equalize up to 60 cents, and on coarse grains to the

highest of their payments -- because as the market kept going down we lowered our initial payments. The result was that we had not been able to treat our growers equitably. When the new government came into power they denied the constitutionality or--I cannot think of the right word--they denied that the order in council was a good one. I do not need to tell you why. Later on, through further negotiation, the new government did agree, by passing the 1930 Wheat Equalization Act to make an adjustment to the wheat grower up to 60 cents a bushel, a sum that involved between \$5,000,000 and \$6,000,000. The wheat growers who did not receive the lowest initial payments all got up to the highest initial payments made. They refused to settle with the pools the same adjustment for coarse grains. They denied and refused to give sufficient money, which was part of the \$8,250,000, to pay the pools for all the work that they had done for the year 1930 in collecting this grain, and they refused to allow a settlement.

We hope yet that we may get that money refunded. We have not given up hope. But in the meantime, for the sake of getting our balance sheet in shape, and so that things may not be too badly cluttered up, and because our organization is a large one, with all its ramifications, the board did agree that we should gradually write off that so-called loss as it appeared at that time. And I took earnings, part of the savings of our members, to take care of this loss which had been created on their behalf. I do not know whether that is a clear answer or not.

Q. Now, one other question: I think we brought out the fact that Modern Press are the publishers of the

Western Producer. Could that be described as the official organ of your pool? A. Well, the pool owns it.

Q. And this Modern Press does job printing, the ordinary commercial type of printing for outsiders?

A. Yes, and we say so in our brief.

Q. I think you mentioned in your brief that you are entering the processing field, and developing an oil processing plant, and flour mills, and so on. A. That is also laid down for the future, yes. That is policy for the future.

Q. And that policy is referred to in your last annual report, is it not? A. Yes.

Q. Have you read the Western Producer of November 23, 1944, in which is an article headed, "Co-op Development"?

A. No, I have not read it, but I suppose it would be a correct interpretation.

Q. I should like to tender it as showing the plan of the ---

MR. PARKER: Who is the author of it?

THE CHAIRMAN: Unless the witness acknowledges it, I do not think that it is of much use to us.

MR. FILLMORE: Very well.

THE CHAIRMAN: You brought in a speech of his yesterday, and I understand this is not an article written by him.

MR. FILLMORE: All right.

THE WITNESS: I can assure you I did not write it.

BY MR. FILLMORE:

Q. I thought the substance of it was in the annual report. Now, coming to the meeting of September 1944, the directors' meeting, at which the reduction charges took place, was that the meeting at which you also auth-

orized the patronage dividend of \$5,800,000? A. No.

Q. When was that meeting? A. That was later -- no, I beg your pardon; it was the week following the one in which we had our financial statement presented by the auditors.

Q. You had your financial statement, and I presume that indicated the liquid position of the company?

A. Yes.

Q. And the gross and net earnings of the company?

A. Yes.

Q. And in view of that your directors decided to declare this patronage dividend, or what you call the excess charges refund. A. Yes, the excess charges refund.

Q. In other years had patronage dividends been authorized by delegates, or simply declared by the directors?

A. The directors have power to declare, but we make no final decision until policy has been approved by our delegates in annual meeting in the first week of November, because they represent the shareholders. In other words, we like to exercise our power, but we want to be sure our growers will approve of it.

Q. Was this approved by the delegates in November?

A. Yes.

Q. With regard to the reason for declaring that dividend, I think you have indicated that it was principally or solely on account of your liquid position; that is, the money that you had on hand and that you had made during the year ended July 31, 1944? A. It was all declared on a patronage basis, the excess charges refund, except half a cent for the purchase of reserves. Because our liquid position was high enough that we did not need

any other reserve.

Q. There was no other reason for that? A. No, none whatsoever.

Q. I call attention again to the Western producer of December 17, 1942, and I will ask you if you gave a statement to the Western Producer which I shall set out. Did you, in December 1942, give a statement to a representative of the Western Producer to the following effect:

"If the final decision made cooperatives liable to income tax, said Mr. Wesson, the wheat pool would only pay income tax once. The next year, he declared, the pool would inventory its business, estimate crop handlings and costs and reduce its handling and storage charges to the point where there would be no earnings."

A. Yes, not to a representative of the Western Producer, but I made it at a public meeting, or words to that effect. I want to make this point clear, however, that that statement was made that in the event of pools being taxable that would be the policy we would adopt. We are not yet taxable.

Q. The decision then was not made in apprehension of being taxed? A. No.

Q. It was not made on account of the fact that an action was pending against you in the Exchequer Court?

A. No, we made the statement on the basis that we still anticipated a substantial surplus for distribution, in spite of that reduction.

Q. And did you also say in a speech on that occasion:

"If the wheat pool were forced to take this action the private grain trade would be obliged to follow

suit and, predicted Mr. Wesson, 75 per cent of the grain trade would be bankrupt within three years under normal conditions."

A. Business under normal conditions, and movement of grain, and net earnings from storage, provided the pool members would remain loyal, that would be so.

Q. So that under normal conditions, that is, under the normal movement of grain, if you adopted a policy of doing business at cost it would impose severe hardship on the line elevator companies. A. That is not any of our business.

Q. Well, it may not be any of your business, but we will let it go at that. The Canadian Co-operative Wheat Producers Limited is still in existence. A. Well, I happen to be president of it.

Q. Is it performing any function at the present time? A. As an institution it is merely an organization through which the three pool boards focus our interprovincial policies, national policies and general discussion, to maintain uniformity of action and policy between pools. But it is in business.

Q. And you did a little policy focusing at Regina last September, I believe. A. Last September?

Q. Yes. A. I do not recall the occasion.

BY MR. PARKER:

Q. Mr. Wesson, in reference to that last remark which you just made, about its being none of your business, if as a result of the policy pursued by the pools the line elevator companies were put out of business -- that was the effect of the question, was it not? A. They do not have to meet it.

Q. That was the effect of your answer, as I under-

stood it, that it was none of your business? A. Yes.

Q. Would you go so far as to say it was no business of the country at large, whether such a situation was brought about? A. I never thought that through.

Q. Then, think it through. A. We lay down a policy in the best interests of our producers. We believe our present policy to be sound, charging ordinary tariffs, where private companies can make a surplus in the interests of their own shareholders. We are quite satisfied to follow the same policy to make savings for our shareholders, who are also the producers of grain.

Q. I understand that. My question was directed to this, as to whether, notwithstanding it might not be the pools' business to hurt the line elevator companies, as to whether you considered it might not very well be the country's business, and the government's business, or somebody else's business, to see that such a situation was not brought about. A. I would agree to that.

Q. Yes, you would agree to that. A. Yes.

Q. In other words you agree with me that it would not be in the public interest for such a situation to be brought about? A. I think that is correct, but I still say it is not our business to take care of them.

Q. I understand that. Perhaps I was confused with another question. Then, about the expansion: the expansion, as I understand it, was paid for out of depreciation reserve? A. Yes.

Q. Is it correct to say -- and again, I may not understand this depreciation reserve -- the amount of them was arrived at in order to keep the plant up to its old level. In other words, it is not to allow fixed assets to depreciate; is that so? A. I think those

were ---

Q. Is that so; answer the question. A. I am trying to answer it. Under the Income War Tax Act 5 per cent depreciation on country elevators and 3 per cent on terminals is allowed before taxing profits. We maintain the same depreciation.

Q. Is it correct to say that the real meaning of a depreciation reserve is to set aside a reserve in order to keep your plant up to date, in respect of obsolescence and general wear and tear? Is that not so? A. It is only partly so, because in addition to depreciation we also spend money for current repairs.

Q. Keeping it up to an efficient standard? A. Yes.

Q. But it is not intended to enlarge and increase the plant, is it? A. If the company wishes to re-invest in capital assets there is nothing to stop it from doing so.

Q. I understand that. However, I will not pursue it further. Then, there is another remark which needs clearing up. When Mr. Fillmore was asking you about your export business you said something to the effect that there was no profit in export business. A. I did not say that, at all.

Q. You did not? A. No.

Q. Does it make any difference whether the business you do with non-members is profitable or not, in order to prevent you from getting the benefit of the exemption? A. I am not just clear as to your question.

Q. I am not very clear, either. Your answer was-- and this is the reason I am asking it--that because a lot of your export business perhaps was not profitable, that you were getting around the 20 per cent clause.

A. I do not think there is any connection in that.

Q. Well, if it has no connection --- A. I think the 20 per cent clause deals with the business of members and non-members as delivered at country elevators.

Q. Business between members and non-members anywhere; does it make any difference? A. I do not know how you make the distinction. I tried to make it clear this morning that so long as we export less than we take in we would be still exporting the equivalent of grain belonging to our membership.

Q. I understand that. A. In other words we would not admit non-member business in export, unless it exceeded the full amount of our handling.

Q. Then, one or two questions by way of clarification. Let me go back to the shares of your various subsidiaries. I think all of those subsidiaries--and you have probably stated this in your brief--are organized under the Joint Stock Companies Act in the ordinary way, and they all have substantial share capital.

A. Either dominion or provincial.

Q. That is true, is it not? A. Yes.

Q. And in each case the shares have been issued as paid up non-assessible shares. A. Yes, and held by the parent organization.

Q. And they are all held by the parent organization, meaning the Saskatchewan Wheat Producers? A. Yes.

Q. With the exception, of course, of sixteen shares in each case, to qualify the directors. A. Yes.

Q. When those shares were issued by those companies to the parent organization, what did the parent organization pay the subsidiaries for the shares, and how did they pay for them? A. It represented ---

Q. Take one at a time. Take the pool elevators.

What did the Producers--I will call it--pay to pool elevators in exchange for the issue of all those shares to Producers? Did they pay cash? A. Yes; the Pool loaned to the Elevator Company ---

Q. No; I am not asking about loans. They bought shares or had shares issued to them as paid-up non-assessible shares. A. They still own the shares in exchange for money loaned to build facilities.

Q. I did not follow that. A. Well, it is a legal question.

Q. The Producer Company -- I presume it holds share certificates in the usual way issued to Saskatchewan Producers, does it? A. Yes, in trust for the membership.

Q. Do they say that on the face of them -- in trust? A. I am not sure.

Q. But my point is, did they pay for those shares? Did they pay the pool elevators for those shares? A. I imagine, by financing the \$12,188,000 to build facilities.

Q. You cannot pay by loaning debtor money. Those are two separate and distinct transactions, are they not? A. I do not know that I can explain it, but I will try to explain it, not as a lawyer but as a layman.

Q. Well then, go ahead. A. The Pool, under its contract, deducted 2 cents a bushel for the purpose of either building or securing facilities, or loaning money to another organization to do the same thing. We chose, as we say in our brief, to set up a subsidiary. We did not need to, but that is what we did. The point was this, that trying to maintain full control of the parent organization, as we have for twenty years, the money was lent to Saskatchewan Pool Elevators, and in exchange the

Pool organization owns the shares, representing \$12,188,000 with the exception of sixteen qualifying shares. And the Pool holds these shares in Saskatchewan Pool Elevators in trust for the members of the Saskatchewan Wheat Pool. I cannot explain it better than that, and my explanation may not be very clear to you.

Q. You told us all that before, but I am just trying to get a little more than that. If the shares of pool elevators had been issued, as I say, as fully paid up and non-assessible shares, then I presume pool elevators were paid for then? A. Yes.

Q. I am trying to find out if they were. A. Yes.

Q. How much did they pay for them? A. I cannot remember what the value of the shares was; do you mean the total amount?

Q. I do not care about that. A. It was about \$12,188,000.

Q. About \$12,188,000? A. Yes.

MR. MILLIKEN: It is set out in the brief as \$12,188,000.

MR. PARKER: I do not care about the exact amount; I am just trying to find out the meat of the transaction, as to whether Saskatchewan Producers took the money which it had under its control -- I do not care whether it was its own money or money they held in trust.

BY MR. PARKER:

Q. Did they take that money and pay pool elevators for shares which they received? A. I suppose that is correct.

Q. Or did they not? A. I think that is what it would amount to, yes.

Q. You have told us, as I understand it, that the

only money which ever passed from Producers to the pools was a loan of around \$12,000,000; is that correct?

A. No, because in addition to that we loaned the full amount of commercial reserves to elevator companies to finance grain.

Q. I am talking about deduction reserves, and I am going to stick to it until I exhaust either you or myself. I want to know what the transaction was, and the terms under which the Producers got the shares in elevators. A. The Producer ---

Q. If they paid for them, I want to know it, and if they have not paid for them I want to know it. A. The Saskatchewan Co-operative Wheat Producers Limited received shares in exchange of the full amount of \$12,188,000, invested in facilities representing the full deduction, less sixteen shares for qualification of the board.

Q. And this money which you loaned to pool elevators, is it still a loan, or has it been paid off? A. It has not been paid off. It is all invested in facilities.

Q. Is the loan still outstanding? A. Yes, it is represented by shares.

Q. The liability to repay the loan was not discharged by handing over the shares.

MR. MILLIKEN: I think there is some confusion here. Pages eleven and twelve of the brief set out how this was handled, this investment of elevator deductions, of \$12,188,000 in shares of the Elevator Company.

THE WITNESS: Yes.

MR. PARKER: I am just trying to clear this up. The witness has been asked if this money was loaned to pool elevators.

BY MR. PARKER:

Q. Was it a loan or was it money which the Producer Company had the authority to use, and to use in the purchase of these shares? That is what I am trying to establish. If my learned friend can assist Mr. Wesson, I have no objection.

MR. MILLIKEN: I think that is what the brief states, and you can ask Mr. Wesson if he has read the brief.

MR. PARKER: Well, let us see if that is what the brief says; if so, I will not ask it.

THE WITNESS: On what page is that?

MR. MILLIKEN: On pages eleven and twelve.

BY MR. PARKER:

Q. I will read it:

"As we have already noted, under the terms of the agency agreement, whereby the grower appointed the association his agent for the marketing of his wheat, provision was made for the association to deduct 2 cents per bushel from the sale of all wheat delivered to it. This money was specifically earmarked by the terms of the agreement for the purpose of acquiring....."

And at that point you were talking about the old, original contract agreement? A. Yes.

Q. And it continues:

"This money was specifically earmarked by the terms of the agreement for the purpose of acquiring grain elevator facilities and deductions of approximately \$12,188,000 were withheld from the proceeds of the grain delivered by its shareholders in the crop years 1924 to 1928 both inclusive."

Now we have your money in the hands of the producers, remember that. And then it continues:

"By the agency agreement the money might be used to acquire grain...."

It might be used by the pools, I interject that --

"....might be used to acquire...."

By the Pool, I suppose it means --

"....grain elevator facilities...."

And that means to acquire for the Pool, I assume --

"....which could be operated...."

By the Pool,-- and I put those words in --

"....as a department of the association, or it could be used to set up an elevator company as a separate legal entity. The association shows the latter method and in February, 1925, an elevator company known as Saskatchewan Pool Elevators Limited, was incorporated under the provisions of the Saskatchewan Companies Act."

And so on. Now, what I wish to know is this, whether the \$12,188,000 was at the time and is now a loan, or whether it was money simply taken and shares purchased in the ordinary way. Tell us which it was. A. I cannot say whether it was a loan or a ---

Q. If you do not know, that is the end of it.

A. I do not know. I do not know whether you can call it a loan, or not.

Q. Now, let us turn to Modern Press. Producers own all the shares of that company, except the qualifying shares? A. Yes.

Q. Did they pay cash for those shares? Did the Producers pay Modern Press for those shares? A. Yes, it those cases it came from commercial reserves.

Q. They bought that outright? A. Yes.

Q. No loan there. A. They own the shares.

Q. Was the money loaned to any one concern, the same as it was loaned to pool elevators, or was that a straight purchase? A. I do not know whether you can call it a loan, or not.

Q. Were they both on the same footing? A. Yes, all on the same footing.

Q. Whatever one was the other was. A. Yes.

Q. And does the same apply to the other companies? A. Yes.

Q. On the same basis? A. Yes.

Q. So we need not go over them, one by one. Is there any writing or any verbal agreement anywhere to indicate that any of these subsidiaries still owe Producers money, whether or not they are still under obligation to repay these various loans? A. I think it is all covered in the contract..

Q. What contract? A. The original contract.

Q. The old original contract? A. Yes.

Q. If it is not in there we will not find it anywhere; is that correct? A. I am not sure about that.

Q. I wish you would be sure. A. Perhaps Mr. Milliken can answer that.

MR. MILLIKEN: Are you just referring to the moneys invested in these stocks?

MR. PARKER: I am trying to find out the terms on which these shares are held.

MR. MILLIKEN: You are not asking about loans.

MR. PARKER: No.

MR. MILLIKEN: You wish to know if there is any document showing repayment of the money invested in these subsidiaries -- in the capital stock of the subsidiaries?

MR. PARKER: Yes, whether the Producers Company

have money invested in these subsidiaries, or whether it is money loaned.

MR. MILLIKEN: There is no doubt about it, it is invested money in the stock. They bought the shares of the companies.

MR. PARKER: All right.

BY MR. PARKER:

Q. I think you also told us that the pool elevators, having acquired money in the manner we have just described, went out and purchased physical assets of the old Saskatchewan Co-operative Elevator Company? A. Yes.

Q. How was the price arrived at? A. By an appraisal.

Q. By an appraisal? A. Yes.

Q. And the appraiser was appointed by whom? A. By the Pool and also by the Elevator Company. The Hon. Mr. Howe, now a minister in the government ---

Q. I do not care who they were; were there two appraisers or three? A. There were two, and a judge.

Q. Two, and a sort of chairman. A. Yes.

Q. And he was appointed by whom? A. By the two.

Q. Appointed by the two. A. Yes.

Q. Was the membership of the old Saskatchewan co-operative Elevators and the membership of the Saskatchewan Pool Elevators substantially the same? A. No, it was not.

Q. What was the difference? A. The membership in the Saskatchewan Co-operative Elevator Company was on the basis of shares -- I think the limit was twenty, speaking from memory. At the time they paid 15 per cent of the original cost, and the government financed the balance of 85 per cent.

Q. You do not understand my question, apparently. I merely asked if the personnel, the individuals, who were interested were the same group of farmers?

A. Yes, they were; I did not understand you.

Q. They were about the same? A. Yes, substantially the same group of farmers.

Q. So that it was really a transfer from Jones, we will say, in one capacity, or under one name, to the same Jones under another name? A. Except that there were more individuals, more farmers.

Q. A few more? A. Yes, a lot more.

Q. You have said that they were substantially the same. What do you mean by that? A. The shareholders in the Co-operative Elevator Company were also members of the Pool, but there were also a lot of members of the Pool who did not own shares in the Co-operative Elevator Company.

Q. It has occurred to me that the price paid of \$11,059,000 was too high a price; what do you say about that? A. We thought so.

Q. You thought it was. A. Yes.

Q. The point is that to whatever extent it was being passed from one back to the other, it did not make much difference what it was, did it? A. No, not to those who were members of both organizations.

Q. And was there a great majority in that position; is that how it came about? A. It was about fifty-fifty, maybe.

Q. Now, let us come to this agreement which was abandoned in 1931, after the disaster. Has there been any agreement between the growers and the Pool since that time? A. In connection with marketing, do you mean?

Q. Yes. A. No, except the conduct of the voluntary pool.

Q. That is what I am coming to. As I understand it the only change made at that time was simply this, that the grower was released from his covenant in that agreement to deliver all his wheat? A. Yes.

Q. And it put him into the position that he may deliver it or may not, as he saw fit? A. Correct.

Q. Apart from that, all other terms of the agreement remained in force? A. Yes, that is correct.

Q. And it is to that agreement that we must look, from that day to this, to find out as to the terms under which the grower delivers his wheat, is that correct?

A. I am not sure that I got your question correctly. I thought you were coming to the investment of money.

Q. Do not worry about what I am coming to; just think about the questions I am asking you. A. Well, I did not get it.

Q. We will try it again, then: I see, under the agreement as originally used, the grower was obligated to deliver his wheat to the Pool? A. Correct.

Q. And by the same agreement the Pool was obligated to handle his grain by the terms and conditions set out in the agreement. A. Correct.

Q. And when you talk about the agreement being terminated, and switching from the compulsory pool to the voluntary pool, you have told me that the only change which was made was that the grower was released from his obligation under that agreement to deliver all his wheat, and he was placed in a position where he may deliver it, or he may not, as he chose. A. Not to the elevators, to the pools, yes.

Q. And that all the other terms of the old agreement were continued in force, and that it is there that we look for the terms and conditions under which the Pool continued to handle the growers' wheat after 1931; is that correct? A. Only to the extent of the investment of the money in facilities.

Q. What is that? A. Only to the extent of the investment of money which we had arrived at under the contract. The pool elevators were to handle the grain, but had nothing to do with the pool agreement at all.

Q. But under the terms of the agreement the Pool had a certain obligation in respect of the disposition of money received from the disposal of the wheat, did it not? A. In the pooling system, do you mean?

Q. Under the terms of the agreement. A. Yes.

Q. There was some obligation on the part of the Pool to do certain things. A. Yes.

Q. And there were certain privileges given the Pool under which they could do certain things by way of reserves. A. Yes.

Q. Did not all those terms continue in force afterwards, after the change? A. No.

Q. To what extent were they modified? A. The contract itself, from the standpoint of delivery, in pooling, passes out of the picture.

Q. All obligations on both sides were terminated. A. Except ---

Q. Except what? A. Except conditions surrounding the deductions and the investment of these reserves.

Q. How were they different; how were they preserved, and all other parts of the agreement abolished? A. That is a legal question, and I cannot answer it.

Q. Can you tell me if there is a written agreement in respect of it? A. I cannot answer that.

MR. MILLIKEN: I think if my learned friend would read the first and second terms of the agreement he would realize that what must be done with the elevator and commercial reserve deductions which were taken from these growers is set forth in that agreement. For instance, the organization cannot take elevator deductions and use them for anything but acquiring elevators. One must go to the agreement and have his rights enforced. But so far as the marketing of wheat pooled is concerned, the agreement has nothing to do with the marketing of wheat, unless it should be pooled wheat.

MR. PARKER: I understand that.

MR. MILLIKEN: So that it has nothing to do with anything like that.

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MR. PARKER: I am not talking about wheat put through the wheat board at all. What I am trying to find out is, what was the change that took place at the time, in 1931, when this contract that we have heard about was terminated, and it became a voluntary pool? I want to know if that entire agreement was wiped out, or whether there was only one single obligation from which the farmer was released.

MR. MILLIKEN: The farmer agreed -- if he delivered any wheat to the voluntary pool, he signed another document, which said the terms of the other contract, that is the binding contract, would apply to the pooling of the wheat he delivered to the voluntary pool. But it did not apply to any other wheat, except the wheat he delivered to the voluntary pool under that document which is filed with the commission.

THE CHAIRMAN: The question is, to what extent did the original pooling agreement become cancelled?

MR. PARKER: That is the whole story.

BY THE CHAIRMAN:

Q. Can you answer that, Mr. Wesson? To what extent was the original pooling agreement cancelled? A. It was all cancelled under the contract, but we made provision for the continuation of the pool for those who wanted to carry on under this agreement to which Mr. Milliken has referred.

Q. And you released the growers from their obligations; that contract was at an end? A. And it became voluntary from then on.

Q. That may be another agreement, but it did not become voluntary under that agreement? A. That is so.

Q. The original contract was entirely cancelled?

A. Yes, sir.

Q. And then another agreement was entered into?

A. Yes, sir.

MR. PARKER: Let us just follow this. My learned friend tells me that at the time the change was made from the compulsory to the voluntary pool, each person who wanted to be relieved of the old contract signed the following agreement.

MR. MILLIKEN: Wanted what?

MR. PARKER: Wanted to switch.

MR. MILLIKEN: No. Those members who wished to deliver grain to the voluntary pool signed this agreement.

THE CHAIRMAN: Then there is no contract at all?

THE WITNESS: Everybody was released.

THE CHAIRMAN: Except this voluntary pool.

MR. PARKER: It was renewed to the extent that anyone who wished to do so could deliver to them?

MR. MILLIKEN: That is right.

MR. PARKER: This is the agreement:

"This acknowledges that I have delivered to or for you the wheat referred to in the under-mentioned tickets/ or car to be dealt with by you on a pooling basis on and subject to the same terms and with the same rights to you--"
Here we get it. This is directed to the company.

"-- as are contained in your 1928-1932 wheat contract with growers, and in order that there may be no doubt as to your right and power to borrow money on and to empower Saskatchewan Pool Elevators Limited to borrow money on the security of such wheat or documents of title thereto, I hereby give you that right and power and transfer to and vest in you the ownership and title to such wheat and empower you to transfer to Saskatchewan Pool Elevators Limited the ownership and title to such wheat and to

authorize and empower that company to borrow money on the security thereof or on the documents of title thereto."

Then there is a place for the signature of the grower and for the contract number.

Q. That is the document under which growers delivered wheat on a voluntary basis to the pool? A. That is right.

THE CHAIRMAN: About one-eighth of the total business, as I recollect it?

MR. MILLIKEN: Less than that, I think.

MR. FILLMORE: More like one-fiftieth.

THE CHAIRMAN: That is right; one million bushels as compared to fifty million bushels.

THE WITNESS: In one year there were over six million bushels.

BY MR. PARKER:

Q. This is the only written document in existence which sets forth the rights and the powers of the respective parties, namely in the Saskatchewan Cooperative Wheat Producers Limited on the one hand and the grower on the other?

A. To the voluntary pool; yes, sir.

MR. MILLIKEN: That, coupled with the contract in the first instance.

MR. PARKER: Oh, certainly. At this stage, Mr. Chairman, I wanted to call to your attention, as well as to the attention of the witness, the fact that the only parts of the old contract which are incorporated into this contract, by reference, are the rights to the company, not the rights of the grower. They are not reserved. I think that is what it says.

MR. MILLIKEN: That is not what was meant, certainly.

MR. PARKER: I will read it again, if there is any doubt

about it:

"--subject to the same terms and with the same rights to you as are contained --"

It all talks about the rights of the company. What I am getting at, and all I am getting at, is where do we go to find in any documents, if there are any, the rights of the grower to participate in these deductions at any future time?

MR. MILLIKEN: There were no deductions to be taken under this. I said yesterday morning that the government announced there would be no deductions taken for paying back debts, and there were no more deductions taken under this document. The last deductions were taken in 1928. That was the first year of the second term contracts. None were ever taken afterward.

MR. PARKER: None after these documents were signed?

MR. MILLIKEN: None whatever for two or three years before they were signed.

MR. PARKER: That is, what I was trying to clear up. I am trying to find where the authority lies which confers any rights on persons who have some interest in these reserves. I thought there might be something there, but if that is the answer to it, it does explain the point.

Q. Can you tell me now, Mr. Wesson, whether any grower who was under the old compulsory pool, who delivered grain on that basis and continued through the years to deliver under this new agreement -- A. They were not compelled to. It was all voluntary.

Q. They were compelled to and did deliver under the old contract, voluntarily delivered under the new arrangement. There were some such? A. Yes.

Q. Where do we go to find out their rights to demand

and receive their share of these reserves? A. There is no connection between the two.

Q. Then take them one at a time. A. The reserves are in connection with the old contract, and not in connection with this voluntary agreement.

Q. Then deal with the old contract first. Where do we go to find the rights which a grower under the old contract has, and to find how he can enforce the receipt of his interest in these returns?

A. Up until 1928 he has a certificate, and since that time he has a statement.

Q. A statement? A. Yes, showing his equity.

Q. Just in the annual statements? A. No; the individual gets his own statement.

Q. Showing what? Have you a sample of those statements here? A. Showing his equity.

MR. MILLIKEN: It is filed.

BY MR. PARKER:

Q. In order to have something on the record, does that show or say that the man can get his interest in that whenever he wants it? A. No, it does not.

Q. He can only get it if, as and when the directors so decide? A. That is right.

Q. That is a fair way to sum it up? A. Yes. The contract states when he can get those deductions. It is virtually upon dissolution.

MR. PARKER: That is what I am trying to get. I am trying to eliminate anything else that might give him any rights.

Q. You say it is all in the contract? A. Yes.

MR. MILLIKEN: Yes. At the present time there is an appeal case before the Saskatchewan courts as to whether or not that contract does say the pool can keep the money until

dissolution.

MR. PARKER: The trial decision was in favour of the grower, and it is under appeal?

MR. MILLIKEN: That is correct.

BY MR. PARKER:

Q. Now we come to another point, this reduction of handling charges. I hope I am not repeating too much of what Mr. Fillmore dealt with, You made a statement yesterday which I suggest upon reflection you might want to modify. In reply to a question put by the chairman you said the reason you made this reduction last September, or whenever it was, was because you were ashamed of the surplus you had acquired the previous year. You did not mean that quite in that sense, did you? A. I did, sir. I just felt that it was too much money to go in front of our delegates with.

Q. Who else felt ashamed besides yourself; the whole board?

A. I don't know. I was, myself. I cannot speak for the board.

Q. But it was the board who made the reduction. Did they all feel ashamed? A. They may not; I will not go so far as that. I am speaking personally, and I say I was ashamed of the surplus.

Q. I am not interested in you personally, particularly. The board took the action, no doubt on your suggestion, I dare say? A. They may not have been ashamed, but they made the reduction because of it.

Q. I say, do you want to modify that as being the only reason for reducing those handling charges? A. If it will help any you can strike out that word "ashamed" from the record.

Q. It is a matter of accuracy, if that was the reason, to avoid a sense of shame, that you took this action.

We will let it stand, if you wish? A. I will leave it in, then.

Q. Very good. You are the president of this association?
A. Yes.

Q. Who is the general manager? A. Mr. J. D. Read.

Q. And this company is operated through this system. There is a president at the top, which is yourself, and a general manager employed by the directors? A. Yes.

Q. The directors are about sixteen in number?

A. Yes, sixteen altogether, including the president.

Q. And you operate through a system of delegates, which is set forth in your by-laws. Right? A. We do not operate the business that way.

Q. You do not operate the business? Who does conduct the business? That is just what I am coming to. I am going to direct your attention now, so you will not have the slightest reason for saying that you do not know what I am driving at, to the fact that I am talking about the degree of democratic control in this organization and the extent to which each member really has anything to say about it. That is what I want to discuss with you. To begin with, you have how many members? A. Around a hundred thousand.

Q. Scattered all over the province of Saskatchewan?

A. That is right.

Q. And somebody has divided the territory in which your members reside into a large number of districts. How many districts are there? A. There are 165 subdistricts.

Q. I was not talking about subdistricts?

A. There are sixteen districts.

Q. And they in turn are subdivided into subdistricts?
A. Yes.

Q. Of which there is a total of how many?

A. A total of 165.

Q. And the members living in the subdistricts meet to do what? They get together as a unit, the growers in the subdistricts, do they not; or do they?

A. I am not sure whether you are talking about the delegates or the members.

Q. No, I am talking about the members. Do the members in the subdistrict get together as a unit from time to time?

A. They meet at shipping points rather than subdistricts.

Q. Well, I do not care where they meet. They meet to do what? A. To discuss their own business and get reports from the delegate.

Q. And do they elect a delegate? A. By postcard ballot.

Q. By postcard ballot? That is, all of the subdistricts in the district -- Is there a delegate for each subdistrict? A. Yes.

Q. They talk over the affairs of the company and discuss the reports as they are sent out to them, and they elect a delegate? A. That is right.

Q. And from there on they are through, that is the members of those subdistricts; everything now has passed into the hands of the delegates?

A. From the standpoint of responsibility, yes, sir. He represents them from that time on.

Q. From there on, that is so; and then the delegates meet, whatever their number may be. All these delegates meet, and what do they do? A. They meet in each district after each election, to elect a director from among themselves.

Q. Who elects the directors? A. The delegates.

Q. The delegates from all the districts, meet together?

A. They meet in each district.

Q. Who meet? A. The ten or eleven men meet and elect one from among themselves as a director.

Q. They elect a director? A. Yes, sir.

Q. And from then on the delegates have about completed their duties? A. No. They are responsible for all the work in their own subdistricts, besides attending the annual meeting.

Q. They elect the directors, and the directors really run the organization? A. They run the administration policy.

Q. I suggest to you that in that kind of set-up the individual grower is so remote from the affairs of this company that it is nothing less than -- I do not want to use the word "silly" but rather beside the point to suggest that they exercise any real control over the affairs and the management of their company; that is, the individual growers? A. Mr. Chairman, if Mr. Parker could see the piles of resolutions that come in from our people in the country, which are dealt with at our board meeting, he would not think we were very far removed from them.

Q. Well, I have not seen them and you have. I put it to you in this way. Do you not think that the connection is at least as remote and as ineffectual as that of the ordinary shareholder, we will say, in Brazilian Traction, scattered all over the country, who sends in his proxy? Do you think there is much difference between the two?

A. I think there would be a great deal of difference.

Q. What is the difference? A. The difference is that each of these 165 delegates lives among his own people all the year; he only leaves to attend general meetings

and district meetings, and he is in contact all the year round with the people at meetings. Then they meet together at our annual meeting, and that is our policy-making body, not the board of directors. The delegates are the policy-making body, representing the people in the country.

The Board of directors from that time on carries out the administration policy and fits in with the policies generally laid down by the delegates at the annual meeting. We employ managers to carry out the administrative policy which is laid down in the board room.

Q. The point is that there is never literally a general meeting of the shareholders of this company at all. Such things do not exist? A. A general meeting of representatives of shareholders.

Q. I am talking about shareholders. A. Not shareholders as such.

Q. There is no such thing as a general meeting of all shareholders? A. No, sir. It is too cumbersome; it could not be done.

Q. Perhaps I should say there is no general meeting of members. You understood what I meant? A. Yes. There is not.

Q. I left the question of the handling charges before I intended to do so, and there is one other point I should like to deal with. Accounts are kept, I suppose, so that the directors or the general manager know pretty well from month to month how the year's business is proceeding?

A. Our directors meet one full week in every month, and we get all reports submitted from the general manager, the departmental officials, and even the president has to submit a report.

Q. The directors and you, as president, are kept in very

close touch? A. Fully conversant all the time.

Q. Right straight through? A. Yes, sir.

Q. You would know the company's financial position from week to week or month to month, whether you were progressing or going back? You would have those reports? A. Yes; we get a trial balance every month.

BY THE CHAIRMAN:

Q. Is it the practice for the same delegates to come up for re-election as directors year after year, or is it a new body every year? A. No, sir. I have been a delegate for twenty years, and a director for twenty years.

Q. So there is a continuity of management? A. I hope so. We have changes, of course, every year; some.

BY MR. PARKER:

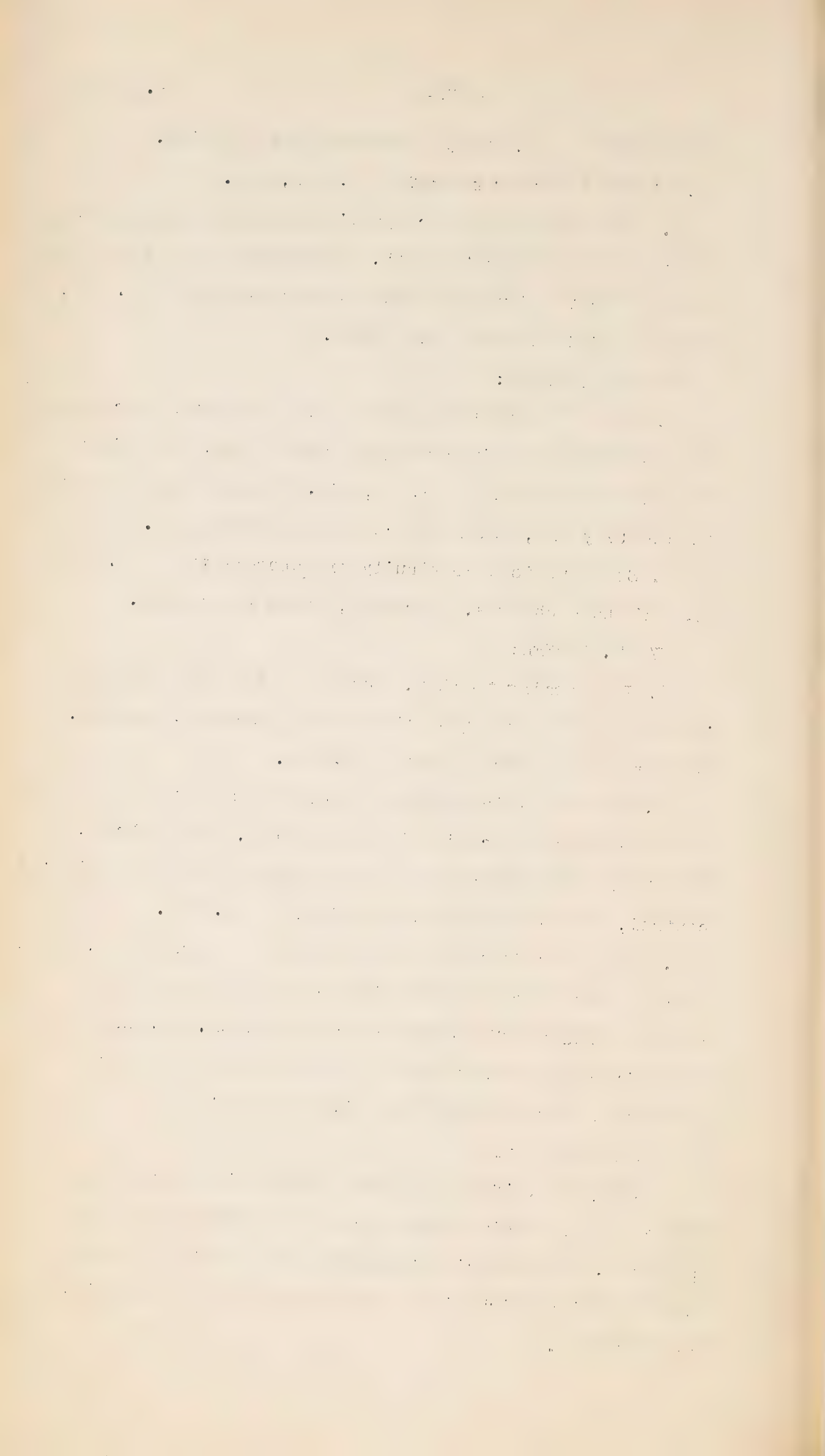
Q. I am coming to that. What I am dealing with now is the fact that you have these trial balances, you say, brought to you every month? A. Yes.

Q. And that trial balance discloses whether the revenues of the company are coming in as expected, and so forth, and whether the expenses are being kept within the estimated control, and all that sort of thing? A. Yes.

Q. Then I put it to you in this way. In August, 1944, when you attended with the Line elevators to have the handling charges fixed for the current year, you knew and your directors knew pretty well what your profits were going to be for the year then just closing?

A. I doubt it.

Q. Why not, if you had this information from week to week? A. A trial balance does not finally denote the position. An interim statement in the month of May gave us a position which did not nearly come up to that figure at that time.



Mr. Wesson

Q. What did the month of June show? A. The trial balance would not show that. It is the interim statements that show the picture.

Q. And you had nothing from June until -- When was it this meeting took place with the Board of Grain Commissioners? A. I think it was the month of July.

Q. I put it to you, then, that in the month of July, did not you and your board know that your surpluses were going to be very much bigger for that year than they had been the year before? A. Oh, yes.

Q. Yet you went and attended that meeting, that is you did or your representatives did? A. Yes.

Q. And made representations asking that the handling charges and the storage charges be fixed at the same as they were the year before? A. At three cents a bushel.

Q. The same as the year before? A. That is right.

Q. And they were fixed at that, as a maximum? A. Yes, the maximum.

Q. And then as Mr. Fillmore put it to you yesterday, within a few weeks, or whatever it was, you suddenly acquired this information that this surplus was so big, you did not need it? A. That is right.

Q. Is that a correct way to put it? A. Yes, because we got an auditor's statement in September.

Q. I suggest that your representative, if he did not have the auditor's statement, at least had a pretty clear indication of how the financial statement was coming out when he attended that meeting? A. No, he would not know. I did not know. I would not estimate within \$1,000,000 at the time.

Q. Very well. You know, and I do not. Then again, did competition enter into the judgment and consideration

of the board when they decided to reduce those charges from three cents to one cent? A. No, sir.

Q. It did not? A. No, sir. Why should there be any competition?

Q. I do not know; I am just asking you. I put it to you, Mr. Wesson that if you reduced the handling charges and the Line companies did not, it would be a distinct advantage to you? A. That is in the event of normal conditions.

Q. I am talking about conditions as they were. A. The growers now must use all available space. It would not matter what it cost; they would still have to use it.

Q. Just one question about the building in Regina. In which company does the title to that building stand?

A. Saskatchewan Cooperative Producers; the parent organization.

Q. They hold the deed? A. Yes.

Q. Is there any mortgage on the premises? A. No, sir.

Q. How was the purchase of the building financed?

A. It was paid for **from** the commercial reserve of the wheat pool.

Q. And the wheat pool has its general offices in that building? A. Yes, sir.

Q. When was the purchase made, how many years ago, about? A. I think it was it was 1928.

Q. And it is a big building? A. Yes, it is; three storeys.

Q. The offices of the association do not occupy the whole building? A. No, there is some space rented on the ground floor.

Q. Rented for what; for commercial purposes?

A. It is rented to the provincial government, the Department

Natural Resources, and to a bank in one corner.

Q. You have substantial rents? I am not interested in how much, but you have substantial rents from the government and from the bank? A. Yes.

Q. And you said something about charging yourselves with rent. Just how does that go through? The company charges itself for occupying offices in its own building? Just what do you mean by that? A. The pool and Pool Elevators pay rent for the space they occupy.

Q. The offices of the Pool Elevators are in there?

A. And the offices of the pool.

Q. I was talking about the pool first. The offices of the Saskatchewan Cooperative Producers are there?

A. Yes, sir.

Q. They are the owners of the building? A. That is right.

Q. And Pool Elevators have their offices in there, and they pay rent to the Cooperative Producers? A. That is right.

Q. And then Modern Press; have they any offices in there?

A. No, sir; they are in Saskatoon.

Q. Any other of the subsidiary companies with offices there, in addition to Pool Elevators? A. For the sake of complying with the law there is supposed to be an office of Pool Agencies there.

Q. I do not care whether or not you comply with the law; all I am interested in is whether there are any other tenants in the building paying rents?

A. No, sir.

Q. In addition to the ones you have mentioned? A. Nobody else paying rent.

Q. Are there any occupying space who should pay rent, who are getting office space free? A. No. Even the Pool itself pays for its own space, into the head office fund.

Q. The pool pays itself rent? A. That is right.

Q. Well, that is all right, if they can do it that way. I do not understand how. Do you want to add anything to that? A. No, sir.

Q. Then tell me why, when the pool decided to operate these various businesses, instead of carrying them on as separate departments of Producers Limited they went out and incorporated these other companies and carried on their business with the aid and through the medium of separate, ordinary joint stock companies? Why was that done,

A. We did it on the advice of our counsel at the time.

Q. You as manager, as the president of this company, have no knowledge and cannot tell me why that was done, and how that serves the purposes of Saskatchewan producers better than operating as separate departments of your organization? A. I can answer in one case. In 1925 the Pool operation itself was so big that we decided that there must be two separate and distinct organizations, under separate managers.

Q. Who decided that? A. Counsel recommended it, because of that situation.

Q. What about these other companies? A. That was on the advice of counsel. I could not answer it.

Q. Beyond that you cannot go? A. No.

Q. You realize that an ordinary joint stock company is an entirely different business set-up from merely a department of another company? You realize that? A. It is a different legal entity; yes, sir.

Q. And that the question of liability may be affected, according to whether you operate through a subsidiary or as a department of your own company?

A. That is one of the reasons, I think, advanced why

each group should stand on its own feet.

Q. And they have been standing on their own feet pretty well since then, have they not? A. All except the Modern Press.

Q. We will leave that out, then; that is the cripple of the family. The others have been what we would call ordinarily successful? A. Yes, sir.

Q. Ever since their birth? A. Yes, sir.

Q. If they were not in any way connected with the parent organization; if they were literally standing on their own feet, you would say that they had all been profitable, at least reasonably so? A. And all controlled by the same people.

Q. I do not care about that. I am assuming they were individual units, and were entitled to keep their own money. The accounts and the records show that they have all been making money? A. Saving money.

Q. You have to make it before you can save it?
A. That is right.

Q. Then they made it? A. Made it for their members.

Q. I did not ask you that. A. We always say "save it."

Q. You have no objection to discussing it with me, whether or not they made it, have you? A. All right.

Q. They were successful joint stock companies, and they operated in a way and a manner which gave them profits at the end of the year. Is that not true? A. If you want to call it profits. We call it savings.

Q. In an ordinary joint stock company? A. Yes, we do.

Q. All joint stock companies?

MR. MILLIKEN: Mr. Parker, I think you are now asking questions which have to do with law rather than statements

of fact. If you were to follow your question and say is it an ordinary joint stock company when it undertakes an obligation to refund part of its earnings, it would be an entirely different thing; but you are not saying that.

MR. PARKER: That brings me to another question.

Q. Do you think the manner in which a joint stock company disposes of its earnings can affect the question of whether or not those earnings are profit? A. Well, we laymen take that view. We may be wrong, but we take that view.

MR. PARKER: That is what I am getting at.

MR. MILLIKEN: I would say that is not exactly right yet; it is not the manner in which it disposes of its earnings; it is the obligation which it may be under in connection with those earnings. The answer to your question, I think, would be a matter of point of view.

THE CHAIRMAN: It is a matter of argument.

MR. MILLIKEN: I think so.

THE CHAIRMAN: There have been so many refinements of phrases in this inquiry.

MR. MILLIKEN: Yes, so I am looking forward to the argument.

BY MR. PARKER:

Q. Just a question about the insurance subsidiary. The parent company also shares in pool insurance, does it? A. Pool insurance is held by the pool elevators.

Q. And Pool Elevators in turn are held by the Producers? A. Yes, sir.

Q. So we have to go through two hands to get back? A. That is right.

Q. Why was that organized in that way, under Pool Elevators? Why not make that a son of the parent company instead of a grandson, so to speak? A. It used to be,

but you see the insurance is carried on for Pool Elevators and not for the Pool. The Insurance business is for Pool Elevators.

Q. Pool Elevators own their assets, and Saskatchewan Producers have no insurable interest in those assets, I suppose? A. That is right.

Q. Do they insure the property of anybody excepting the property of Pool Elevators? A. Not to my knowledge. It is a small fraction of one per cent if there is any. It might be an employee's car, or something like that.

Q. Why do they do that? Why do any part of it? A. I could not answer that. It became a policy --

Q. But you say it is trivial, whatever it is. It does not do any great proportion of other insurance? A. No, sir, none at all. It is a fraction of one per cent of the total.

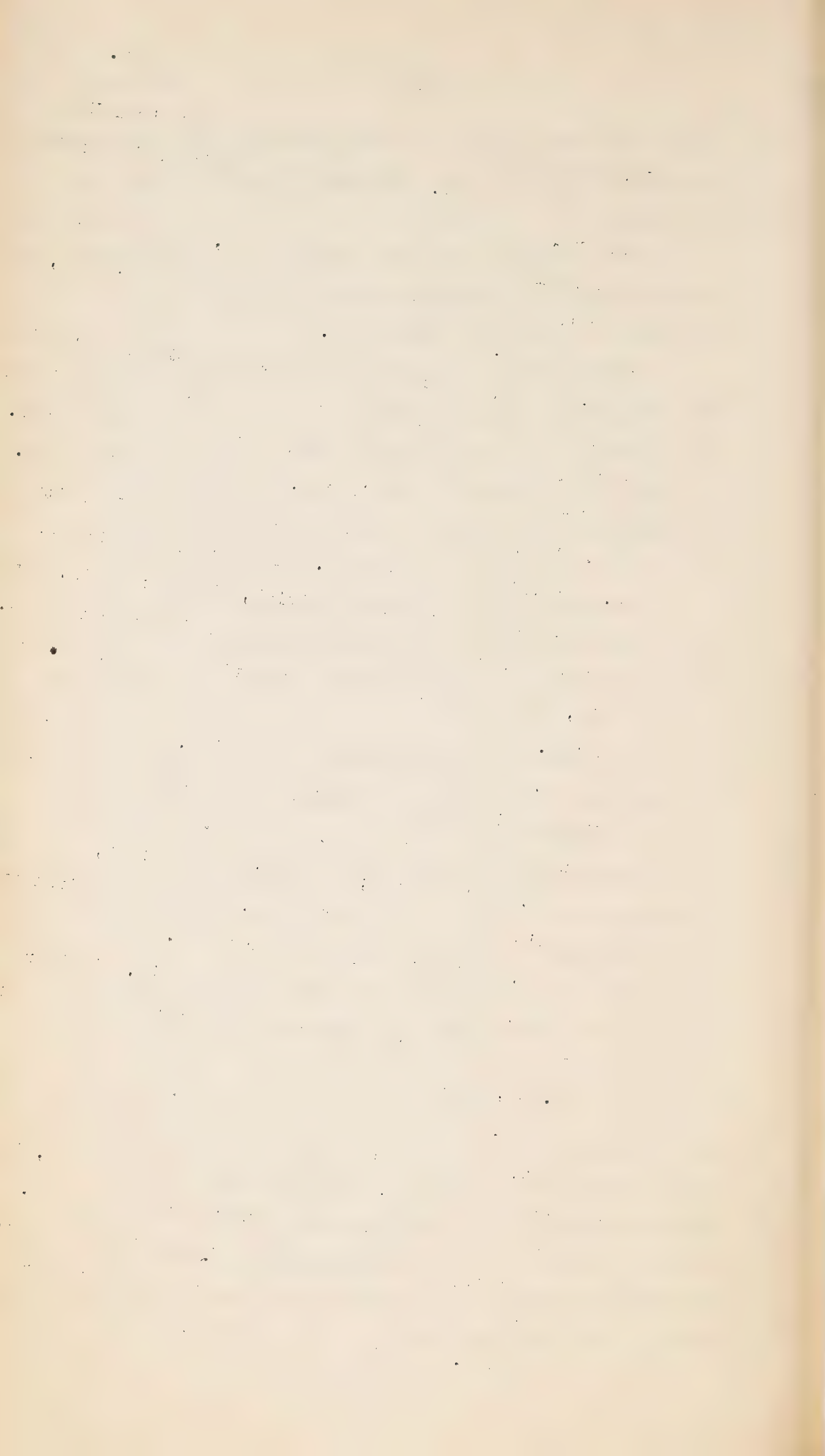
Q. Then one word about expansion, and I am finished. You mentioned in your brief a programme of expansion which you have in mind? A. Yes, sir.

Q. That is what; an oil crushing plant, or something to do with vegetable oils? A. That is the first project.

Q. What is? A. A flax crusher.

Q. And I suppose there is no limit, within reason, to which this company may not expand in various fields? A. Oh, yes.

Q. What is the limit? A. As far as we can find out, there are certain functions that can be carried on by a producer cooperative in industrial work, in manufacturing products from agricultural products. There is a limit; there is a line of demarcation as to how far you should go before it should be turned over to the consumer groups. We can go so far.



Q. That is what I am trying to get at. Could you give us, speaking generally, what that line of demarcation is up to which a producer cooperative can indulge before it can no longer reasonably be said to be assisting the primary industry to get rid of its product?

A. Could we illustrate with flax?

Q. Yes, go ahead. A. The Pool sets up a flax-crushing plant. We crush oil; we get oil and proteins, oil cake and oil meal. Any surplus or any savings that can be made belong to the producers. If we go into it further and set up a paint-mixing plant, and go out and buy pigments and other things, we are stepping beyond our cooperative status for exemption under taxation and saving. On the other hand a consumer group, on the consumer side of the movement, can go into a paint-mixing plant, can go out and buy pigments and so on, as long as they sell the product to their own membership, with a leeway of twenty per cent; they are still a cooperative. We have learned this line of demarcation because of certain discussions with the ministers and the department during these last two or three years, and we are guided a good deal in our programme because of the opinions of departmental officials of the government in Ottawa at the present time.

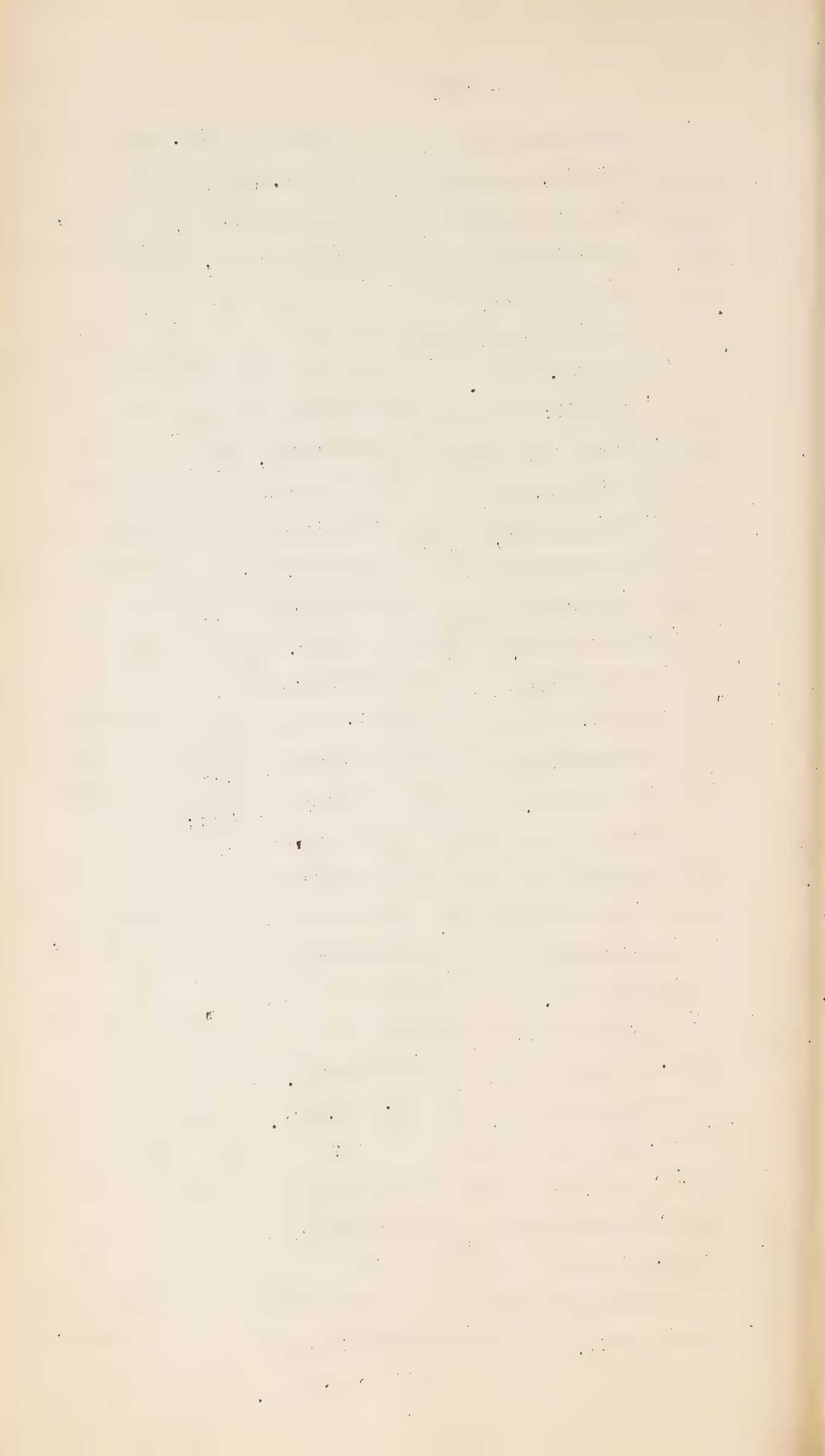
Q. Have you given consideration to this question. You operate, you believe, as a cooperative? A. Yes, sir.

Q. That is the system under which you operate?

A. Very definitely.

Q. Is it your objective ultimately that you and other cooperatives should occupy the entire field of the business world? A. No, sir.

Q. Can you give us the extent to which you consider you should go? A. I will admit, as far as we are concerned,



it would be only to deal with the handling and the processing of agricultural products, and no others.

Q. All agricultural product? A. That we control ourselves.

Q. How many do you anticipate controlling? Is it your objective to get control of all the wheat, for example, or substantially all? A. We could not do that.

Q. Why could you not? A. Because we are a voluntary organization. There is no compulsion for anybody to deliver to Pool Elevators.

Q. I should think if it is good for one hundred thousand, I do not see why it would not be good for another fifty thousand to come along also? A. That could only be done by legislation which would compel the balance to do it.

Q. Why would they not come voluntarily, as well as the one hundred thousand who did come, if it is a good thing? A. Let me repeat that, while we have those one hundred thousand members, they are not compelled to deliver grain to pool elevators. It is all voluntary, even though they are members. It always has been so. We had a compulsory contract for pooling, but there is no compulsion in regard to the delivering of the grain to pool elevators, and never has been.

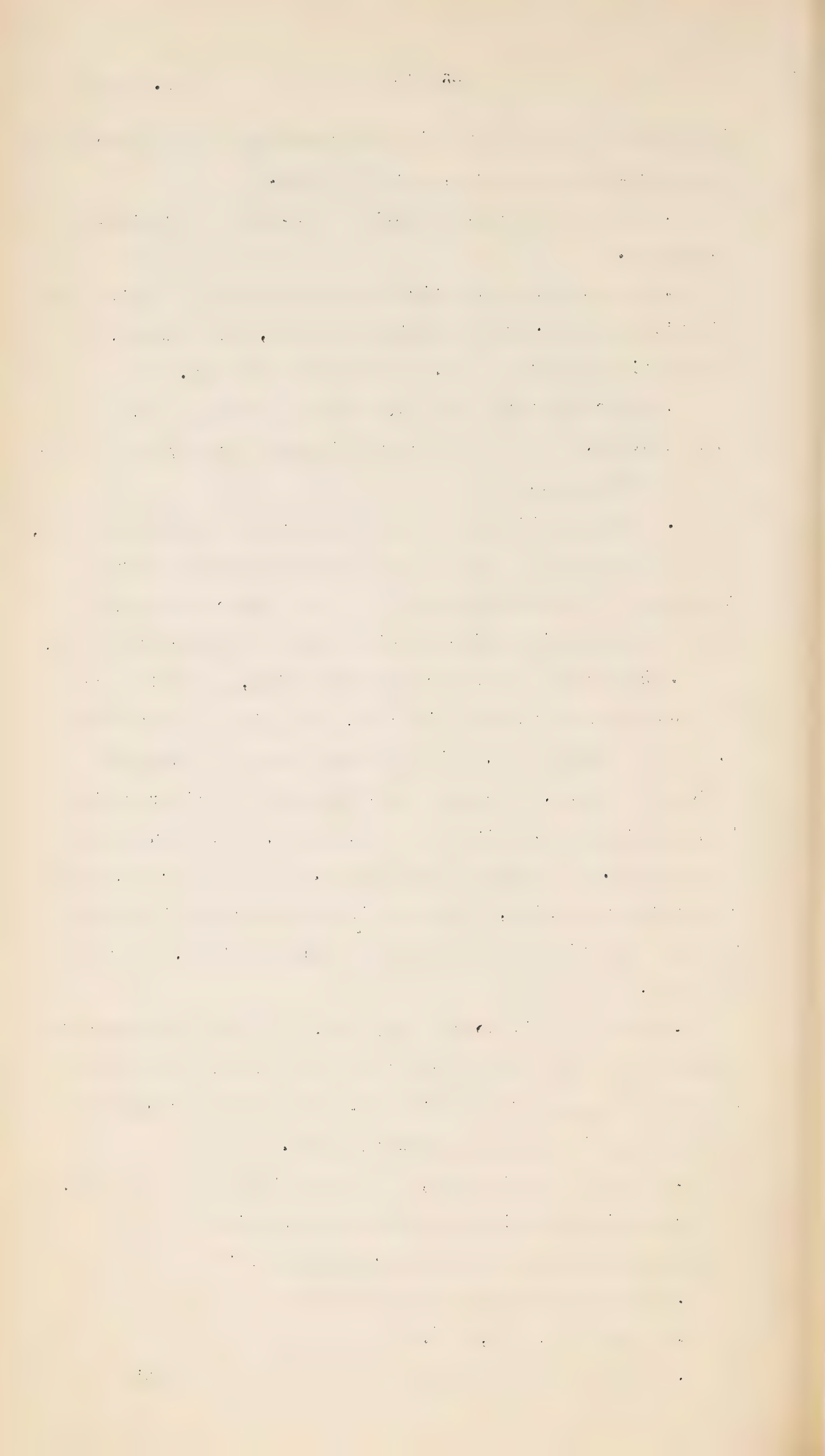
Q. Are you affiliated in any way, or have you any working arrangement with what we will call the general cooperatives under the Cooperative Union? A. Only for the purpose of meeting and discussing general policies.

Q. Is your organization, the group which you represent, in accord with the views of the national union on this movement and its place in the economic world?

A. The Cooperative Union of Canada?

Q. Yes. A. Oh, yes.

Q. And are you in accord with them on this question of



taxation? A. Yes, sir.

Q. You have discussed that with them I take it?

A. We are part of the Union. We are members of the Union.

Q. And have you discussed with the Union, or as a member of the Union, any recommendations to be placed before this commission, to try to solve this problem which we are here to consider? A. Yes. Mr. Good will deal with that at the opportune time.

Q. The views which Mr. Good will express as president of the Union, we can take from you as clearly expressing the views of your organization? A. If we can come to a unanimous opinion prior to that time.

Q. That is what I am coming to. I do not want to anticipate Mr. Good's recommendations, but are you in a position to say now whether the recommendations that he is going to submit have become finalized, or are they still being discussed? A. They are still being discussed.

Q. You have made known to him the views of your organization? A. Yes.

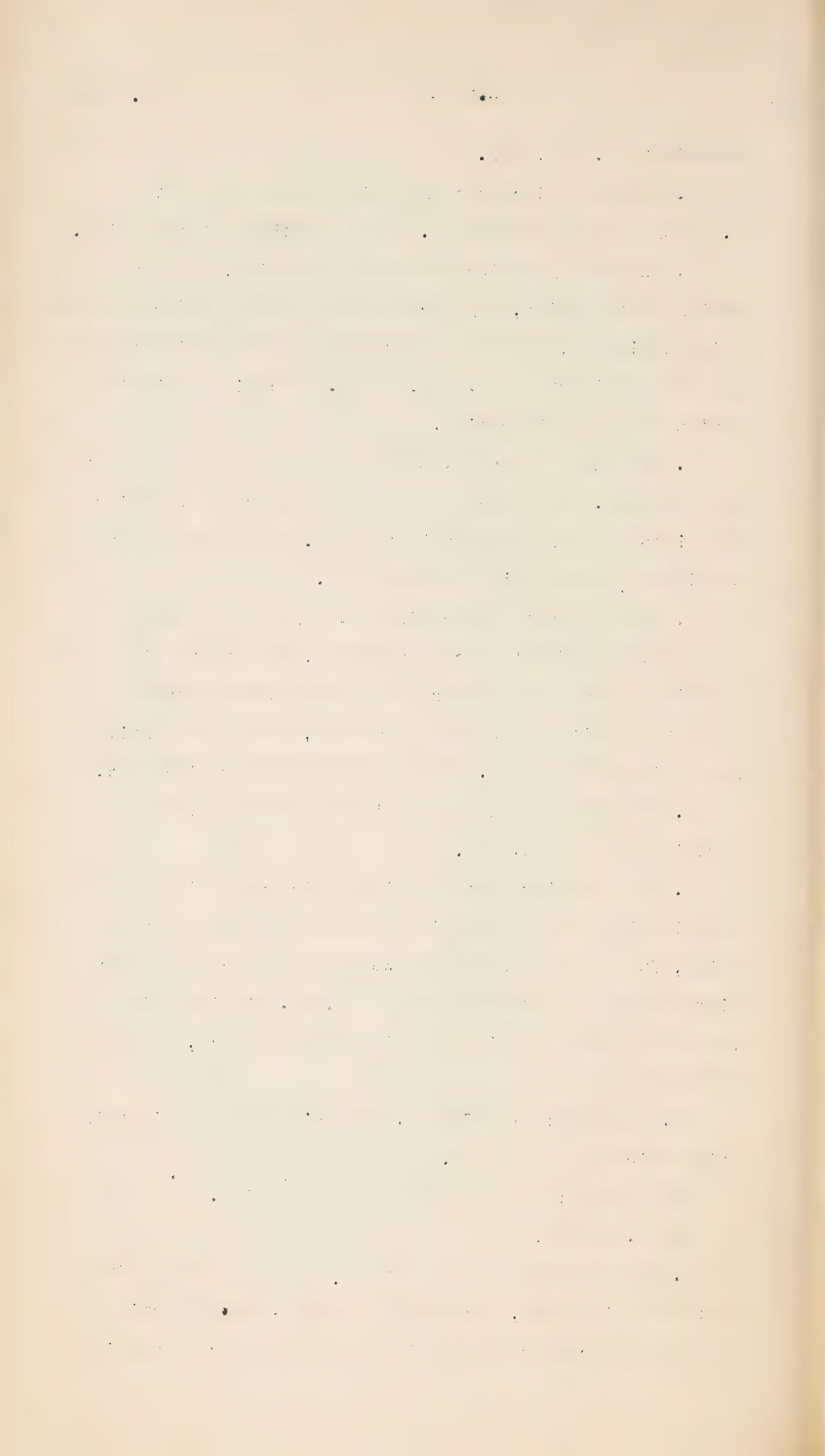
Q. And assuming that the views which are held by your organization do not meet with the approval of the whole Union, just how and when are we going to ascertain your views unless we get them now? A. Mr. Milliken will let you know at the time if there is any difference, if I am not here myself.

MR. MILLIKEN: I think Mr. Wesson's views are in this brief which has been read.

THE WITNESS: Our views are in this brief.

BY MR. PARKER:

Q. Then perhaps you can turn to them and tell me just what your views are, because we do not want two sections of the Union coming in and giving separate recommendations?



MR. MILLIKEN: They are on page 38, as to the question of taxation.

THE WITNESS: I think it starts on page 37.

BY MR. PARKER:

Q. You just say, "Do not tax us at all." That is all there is to it? Q. That is right. It is savings; all the money is savings, belonging to the members.

Q. Then just one more question, Is your position this, that because of the way you are constructed, that is the company; because of the way it is set up and the way it operates, you just do not have any income to tax, and therefore that is the end of the matter? Or do you take the position that notwithstanding that you do have taxable income, you are exempt from the taxation by the provisions of the statute? Which of these positions do you take? A. Either one. If the statute was not there, we would still take the same stand, that we make no profits but only earnings which belong to our members.

Q. Are you prepared to recommend that section 4(p) be repealed? Do you feel safe in standing on the nature of your business not to attract taxation? A. I have not been authorized to make that recommendation.

BY THE CHAIRMAN:

Q. In fact, Mr. Wesson, you derive some comfort from section 4(p)? A. Yes; we have, up until 1940.

BY MR. PARKER:

Q. That is your position? A. Yes, sir.

Q. I am serious about this. You believe honestly that you have no income by reason, as I say, of the nature of the business? A. That is so.

Q. But if by any chance you should be wrong on that, then you hold that section 4(p) should be there as a sort

of second string to your bow. Is that your position?

A. That might cover it very well.

Q. Are you reasonably familiar with this section 4(p)? Have you made a study of it at all? I do not want to ask you questions of law.

A. I have never found many lawyers who would agree on its interpretation, so I do not propose to try to interpret it.

Q. I will agree with you to this extent, that it may need clarifying. But do you hold that it covers all of the activities of your companies? A. Yes, we do.

Q. It is not limited to the primary producers, dealing with primary products? You do not hold that, do you?

A. We do, because, as we say in the brief, under the amended act we had a refund of our last taxation year, from 1928, I think; and since that time we have received letters, right up to February, 1940, which said that in the opinion of the department we were exempt under section 4(p) of the Income War Tax Act. There is no reason why we should have doubted it, and we conducted our business under that protection; or, as the chairman chooses to call it, we got a certain amount of comfort from it. Why should we throw away comfort, if we have it?

Q. Did you pay provincial income tax, when it was in force? A. Yes, we did.

Q. On what basis? A. It was very small.

Q. Why did you pay at all? Was not the same exemption provided in the Saskatchewan act? A. We paid it under protest for years, but then there was another evil that came into the picture, the corporation profits tax, which would have cost much more money than the assessment, so we thought discretion was the better part of

valour.

MR. MILLIKEN: By the way, just in that connection, the Saskatchewan act was not like the Dominion act. The exemption for cooperatives in the Saskatchewan act said that any organization incorporated under the two Saskatchewan cooperatives acts was exempt, and none others; and they allowed the patronage dividend. We did appeal one year against it but, as the witness has said, we dropped the matter because there was a nother tax there which might have been worse.

Q. Is that not correct? A. That is right.

MR. PARKER: I understand that Mr. Steer wishes to ask the witness one or two questions. Perhaps he should do so before Mr. Milliken resumes his examination.

BY MR. ELLIOTT: I have a few questions that I should like to ask you, Mr. Wesson. Yesterday, in reply to Mr. Fillmore, you said that in 1931 and 1932 approximately one fifty-fourth of the wheat received by the elevators belonged to the voluntary pool? A. I agreed that was the case, from the figures quoted.

Q. And those were the figures? A. Yes.

Q. In any case it was a rather small proportion?
A. Very small.

Q. Are we to understand that the small proportion which was pooled represented the wheat of all the members which was handled by the elevator system? A. Oh, no, sir. Pool members sold wheat on the open market.

Q. Have you any information concerning the proportion of members' wheat to total wheat which you handled, or which the elevators handled? A. Through the years?

Q. Yes? A. I think that statement is filed with the commission.

MR. MILLIKEN: It is filed with you, sir, starting I think with 1935.

MR. ELLIOTT: I was particularly interested in this previous period.

MR. MILLIKEN: If you would like the figures we will get them and file them with you.

MR. ELLIOTT: Thank you very much.

Q. A refund of excess charges, you said in your brief, was declared; and on page 15 you say that the surplus for the years 1932 to 1938 was distributed on the basis of the volume of business done for that whole period rather than for each twelvemonths period. Why was that method followed, instead of taking the twelve-months' period? A. We were going through a lot of bad years, you remember at that time, Mr. Commissioner, and we were trying to rehabilitate ourselves financially, to keep our head above water and meet our commitment to the government. The result was that it would have entailed an enormous amount of bookkeeping during those different years. So the board, wisely or otherwise, decided to make a distribution of the money that had been used to meet the principal payment on the basis of bushels, on the same basis through all the years.

Before you ask me, I am anticipating your question. How could we have allowed those who delivered grain in 1937 an earning, when we had an extreme loss. I will agree with you that it could not be so; but the delegates, in discussing this whole thing, which took a number of days to settle this whole question, decided at the time there was only one way it could be done, and that was to take the full period and apply the one-half cent a bushel, or whatever it was, during the period of about eight years.

Q. When was that decision reached, to distribute it

on that basis? A. In 1933.

BY THE CHAIRMAN:

Q. Would that not involve quite a bit of accounting, to ascertain the basis of distribution over all those years?

A. We had our records; but if we had taken each year it might have been -- well, it was less than nothing in 1937; it might have been one-sixteenth of a cent in other years, or one and a quarter cents in other years. It was easier to do it this way.

BY MR. ELLIOTT:

Q. It saved a great deal of computation to handle it in this way? A. That is right.

Q. On that same page, 15, you say that in 1933 the refund of excess charges was declared on something in excess of \$714,000. When was that declared?

MR. MILLIKEN: I wonder if it might not help if I were to make a statement and ask the witness to verify it; I think it would clear up what you are getting at.

Q. Mr. Wesson, these patronage dividends from 1930 to 1938,-- they are the ones you are referring to, sir?-- when the pool decided in 1931, I think it was, that they would require all of their earnings to pay the heavy overpayment to the government, which called for about \$1,150,000 a year, they passed a resolution, did they not, to the effect that there would be no further patronage dividends for any earnings paid out for the time being?

A. And no interest on the deductions.

Q. That is, that they would be used to pay the debt?

A. Yes.

Q. Out of those patronage dividends from 1930 to 1938, some \$2,500,000 -- A. It was \$2,559,000.

Q. It was never paid out at all; it was merely credited

against the overpayment of the individuals? That is, wherever anyone who was entitled to any one of those patronage dividends in those eight years had an over payment from the 1929 crop, the patronage dividend was credited against the over payment. At that time they intended to try to collect it from the individuals. If the patronage dividend was more than the overpayment of the individual , the difference was paid. If he had no overpayment at all, the difference was paid, and there was only about \$290,000 that was actually involved in a money transaction. The rest of it was merely charged off to overpayment.

I want you to listen carefully, Mr. Wesson, in case I am wrong. In 1938 or 1939 they decided there was no use longer trying to collect this money from the individuals, and decided that they would clean up the business in this way, by wiping out the charges and individual debts against the individuals, because they thought it was no use trying to collect any more of it, and that they would merely pay it from the earnings of the elevator company. The elevator company gave a mortgage to the government, as Mr. Wesson explained this morning to Mr. Fillmore, and the moneys paid are shown by the books of the company to have been paid by the wheat pool. Therefore the elevator company kept transferring this money to the wheat pool, which was then paid to the government on the mortgage. Is that all clear?

A. That is right.

BY MR. ELLIOTT:

Q. This 1933 figure of \$714,000, then, represents what, exactly?

A. The principal that was paid to the government.

Q. On behalf of those who had received excess payments?

A. That is right.

Q. Did that include both members who entered the voluntary pool, and those who did not? A.No, sir; just those pooling under the contract in 1929.

MR. MILLIKEN: Just those who had received an over payment.

THE WITNESS: Yes, those who had received an overpayment.

BY MR. ELLIOTT:

Q. Those who had received an overpayment under the contract of 1929? A. Yes.

MR. MILLIKEN: That is, they were credited. There might be somebody who had joined the pool since 1929, who had not been a member before that.

THE WITNESS: May I interrupt to say there was another class of people: members who had no grain to deliver, who were completely hauled out, and all that sort of thing. They were still members under the contract, but they delivered no grain, so there was no loss. There is always a large number in that class each year, as you know.

BY MR. ELLIOTT:

Q. And you have told us that you are submitting to the commission a detailed statement about the way those excess payments were handled? A. Yes.

MR. MILLIKEN: Yes, the way the 1929 overpayment was handled.

BY MR. ELLIOTT:

Q. I should like you to get straight, for the record, these exact dates that you told Mr. Parker about. I understand that in June your board of directors received an interim report? A. In May. Every May we receive one, which gives an estimate of our position.

Q. And that report would be considered at a meeting of the board of directors? A. Yes, sir.

Q. Held in what month? A. In the same month; May.

Q. Then in July you made your representations to the Board of Grain Commissioners concerning the charges for the subsequent year? A. Yes, sir.

Q. And in September you received a statement from your auditors? A. That is right.

Q. Which showed your situation during the last three months, as well as the rest of the year. Prior to receiving that auditors' statement, did you have another quarterly report? A. No, sir. I think for the purpose of clarification, it seems to me there is some misunderstanding as to the knowledge that we must have at all times. We take delivery of grain every three months. I am only speaking from memory, but I believe we actually received somewhere around 50,000,000 bushels in three months which was not anticipated when the May interim statement was brought in. At the end of July, of course, we are not in a position to know. The May interim statement may be dated up to April 15, or perhaps April 1. I do not mind admitting to you frankly, sir, that the final results astounded me, compared to our estimated position in the month of May.

Q. And your auditors' statement gave you the situation up to July 31? A. Yes, which we received in September. It takes some time to clear the books and get the balance.

Q. And that was considered at a meeting of the board of directors in September? A. The position was considered by the three boards together.

Q. And a decision was reached by your board? A. Separately, as to the amount.

Q. As to the change in policy? A. As to the amount of the change.

Q. And the date of the change in charges; what date was

that? A. Speaking from memory I think it was about October 1 or October 2.

Q. Then subsequent to that, presumably, there was a general meeting of the delegates? A. The first week in November.

Q. Thank you very much; I wanted to get the sequence straight. A. May I say, sir, that the delegates approved the policy unanimously.

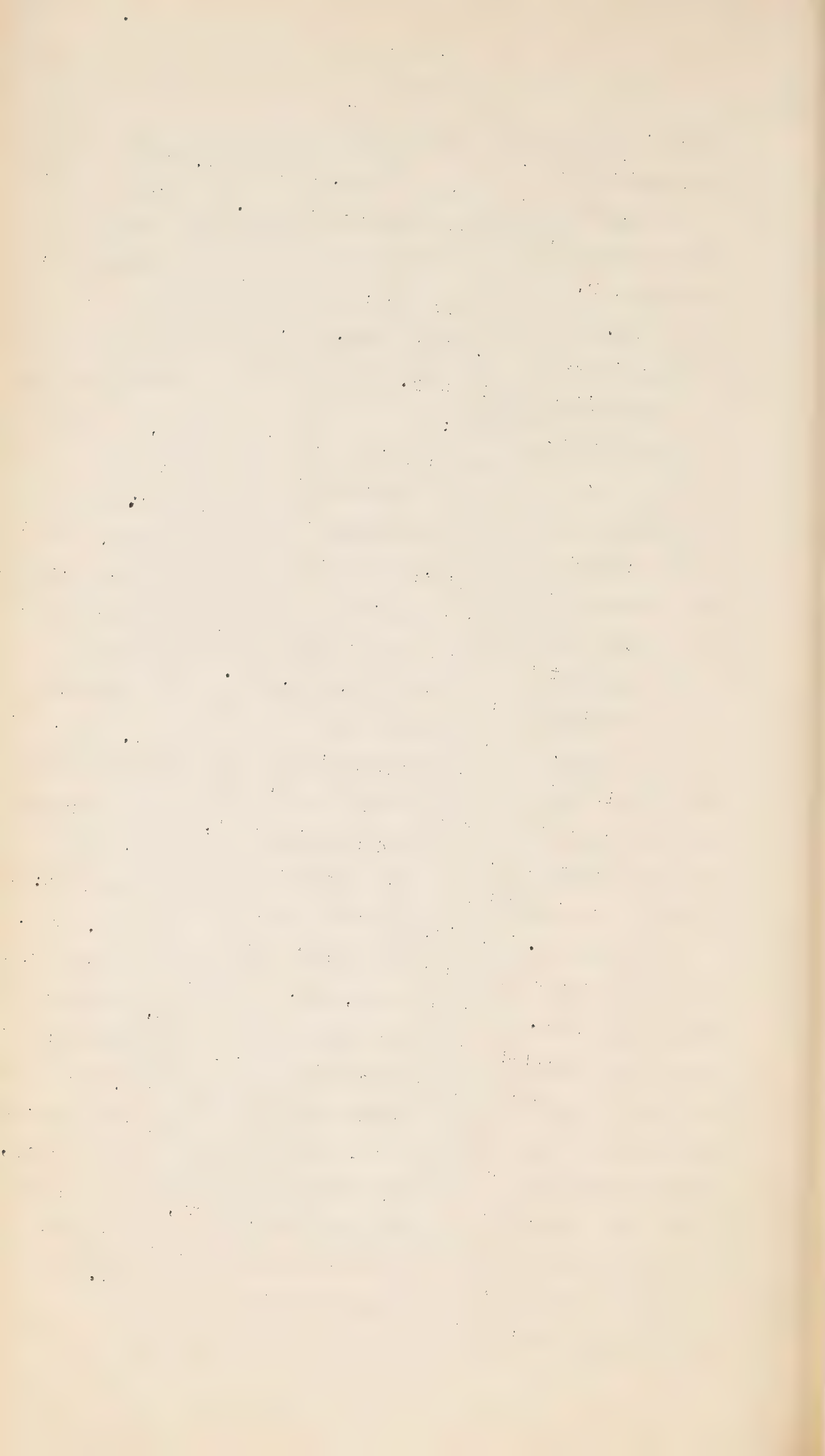
BY MR. ARNASON:

Q. If you will permit a question or two, I think you said the reason why you had discontinued the payment of interest on your elevator deductions from 1931 to 1942 had been because you needed the limited earnings of the company, or had to use a substantial portion of the earnings of the company to meet the obligations to the government under the terms of the overpayment? A. Yes, sir.

Q. In view of the changes which have taken place since 1942 in the financial position of the pool, has consideration been given by your delegates to the making of a payment on what might be termed back interest, that is for those years during which no interest payment was made?

A. No, sir, we did not pay any back interest; we paid interest at three per cent for the one year, 1943, and then 1944. Might I say, sir, that delegates in annual meeting decided this for the board about 1931, and I do not mind admitting to this commission to-day that the delegates again told the board what to do in 1943, because we had not recommended it. In other words the delegates come in, and they represent the people in the country, and we have to carry out what the people want, as well as we can do it.

Q. At the bottom of page 15 you say that refunds of excess charges are paid to members only. Have your



delegates ever considered making a patronage refund to non-members? A. No, sir, they never have in twenty years.

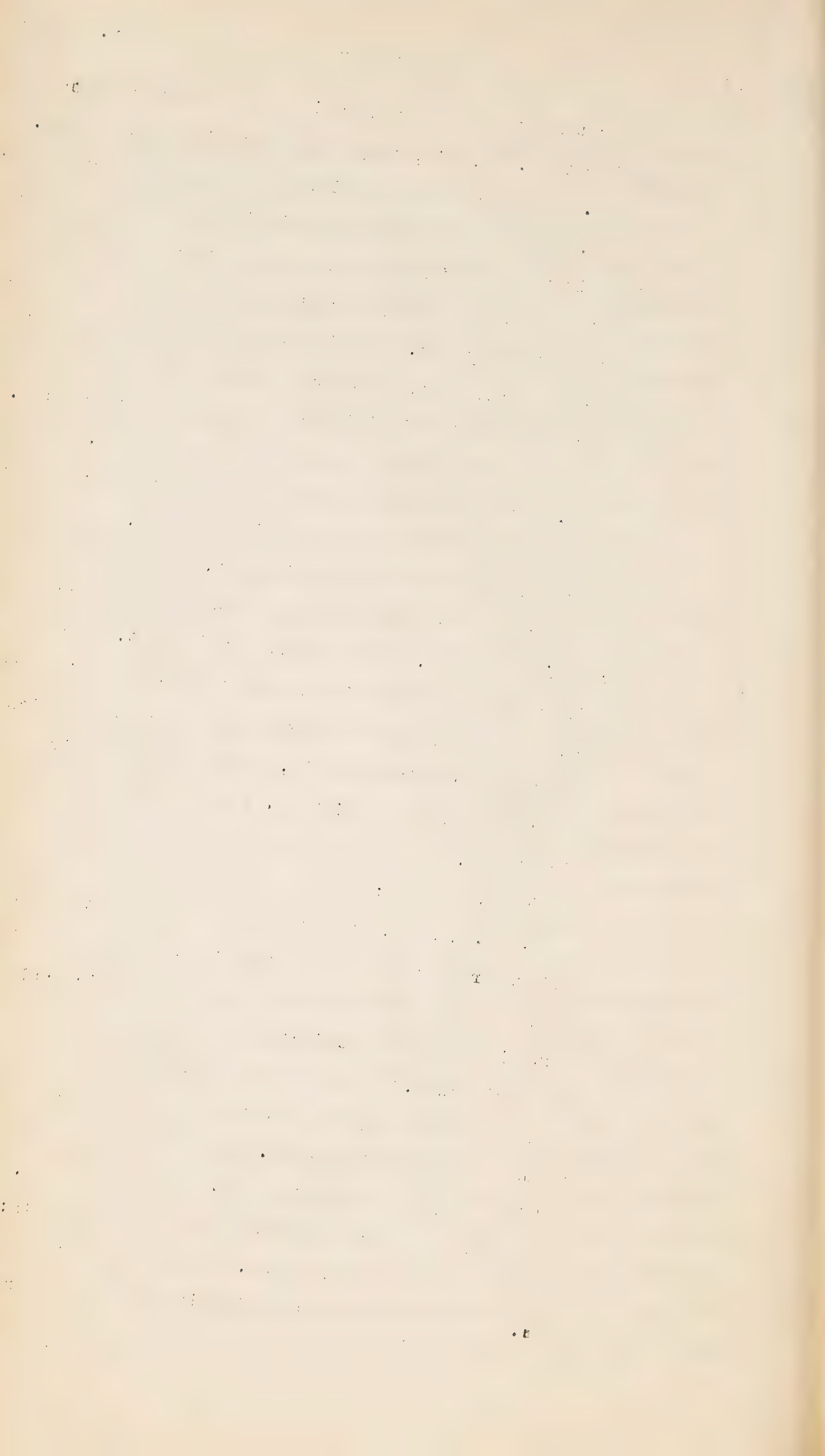
Q. Would you care to enlarge on the reasons for that?

A. Because we believe that it is so easy for farmers to voluntarily join the pool organization we should not offer them any monetary incentive to join by paying out patronage dividends. It is quite free for them to come in. We have no policy under which we make deductions and automatically make the individual a member or shareholder. He must pay the money and become a shareholder.

Q. With reference to patronage refunds which are declared or are credited to the members in one year, or on the basis of the operations of a certain year, and for some reason or other the payment of those refunds to the members in cash is deferred, either wholly or in part, would it be your opinion that the individual member should consider those refunds as a part of his income in the year in which those refunds are credited to him, rather than to wait until they are actually paid to him? A. I think that would be the fairest way.

BY MR. VAUGHAN:

Q. Mr. Wesson, on page 38 of the brief you say "these savings" referring to the savings of the cooperative, "which after all represent part of the selling price and the farmer's deductions are now subject to tax as part of the income of the individual." Have you ever tried to get any figures as to how many of your members pay income tax? You have a hundred thousand members. Do you know how many of those actually pay income tax? A. I could not say, but I can only tell the story of what I am conversant with; that is the case of my own brothers, who farm my farm as well as their own. Their share of the distribution last year from the



previous year, \$2,165,000, amounted to approximately \$200, and it became part of their income in that year, and they paid additional tax because of it.

Q. I know your brief is right where you say it is subject to income tax, and I had no reason to think you would have the figures, but I just wondered if you had ever made any inquiry from the standpoint of the pool to see how many actually did pay income tax? A. No, sir, we have not.

Q. When you make the rebate for the excess charges, is that reported to the Income Tax Department in any way? A. I am not clear on that. I am quite sure that when we distribute the interest payment cheques, we have to deduct 7 per cent under the law from those small cheques, and some of them are very small.

Q. But this amount which you say is subject to income tax when it is handed to the individual, is there any report made by your organization to the Income Tax Department?

A. On each individual account?

Q. The same as it is done by corporations, in reporting dividends? A. I could not answer that question. We would have to get that for you.

Q. Mr. Parker asked you some questions about the subsidiaries. They all have a limited liability, the same as corporations, I presume? A. Yes, sir.

Q. Any one or all of the subsidiaries could fail without any responsibility falling upon the parent company?

A. Finally the load would come back onto the parent organization. It has to.

Q. Do you think it really would, if they are under limited liability? A. Well, take all the losses suffered by the Western Producer. The pool had to foot the bill each year and pay the deficit.

Q. They might have done it, but did they actually have to do it? If they are separate entities, operating under limited liability, one would think they could each go under separately? A. I suppose we could let it wind up, but we did not wish to do so.

MR. MILLIKEN: You are asking an interesting question, and I think the answer would be Yes for all but Pool Elevators; but you will observe that we have said in this brief somewhere, I am not just sure where, that the Pool Elevator account is always guaranteed by the pool with the bank, and the result of the limited liability of the Pool Elevators has never been of any significance at all. We might as well not have it, because ever since it started the pool has had to guarantee its bank account. Then when the Pool ran into the overpayment, the Elevator company had to mortgage its assets to the government, so we had in that one concern no deficit. But in connection with the others I think what you say is correct. All the others would stand their own feet.

BY MR. VAUGHAN:

Q. Mr. Wesson, you said there was a pool for each kind of grain, a savings pool, but not a savings pool for each grade? A. That is right.

Q. I presume you set rates for each kind of grain, wheat, oats, rye, barley, flax and so on; that is, rates for handling? A. Yes.

Q. Then how do you determine the cost that applies to each? A. Our records show the amount of revenue we have received in handling wheat, and the storage we have collected against oats, barley, flax and rye.

Q. You can keep your costs in such a way that you know the charges applying to each?

A. Yes, sir. We know the per bushel position of all classes of grain at the end of each year, the cents saved on each class.

Q. I was just wondering if that was merely some average or arbitrary figure? A. No.

Q. It is pretty accurate? A. It is reasonably accurate.

Q. Regarding the non-members, there is a certain saving made through non-member business. Where does that saving eventually go? A. It becomes part of the income for distribution.

Q. That means it goes to the members? A. That is right.

Q. As a profit from the business of the non-members?

A. Correct.

MR. PARKER: Mr. Steer wishes to ask a few questions. Should he go on now or should he defer his questions until after lunch?

THE CHAIRMAN: I think we might as well adjourn now.

At 12.35 p.m. the commission adjourned until 2.15 p.m.

Ottawa, Tuesday,
April 24, 1945.

The Commission resumed at 2.15 p.m.

JOHN H. WESSON, examination continued.

MR. PARKER: I understand that Mr. Steer would like to ask a few questions of this witness.

BY MR. STEER:

Q. I have no doubt, Mr. Wesson, that you agree with the statement that your counsel Mr. Milliken made yesterday morning with regard to the important part played by the United Grain Growers in the development of the farmers movement in western Canada? A. Yes. I am still a member.

Q. As a preliminary, I wonder if we could know just what documents have been filed on behalf of your Saskatchewan pool. I take it we have had the annual reports for the last ten years. Is that right? A. I could not answer as to what has been filed. You will have to get that from Mr. Milliken.

Q. I take it these annual reports for the past years have been filed, Mr. Milliken?

MR. MILLIKEN: That is correct.

BY MR. STEER:

Q. From what you have stated, I take it that we may rely on the accuracy of the statements contained in those reports? A. Yes, sir.

MR. STEER: Mr. Chairman, I am a little puzzled to know what has been filed and what access counsel are going to have to what has been filed.

THE CHAIRMAN: That is for the information of the Commission only, Mr. Steer.

BY MR. STEER:

Q. Now, Mr. Wesson, I gather from what you have said and from the documents, the annual reports to which I have referred, that the amount of capital stock of the Saskatchewan pool is comparatively insignificant. A. It represents a dollar for each shareholder.

Q. It represents about \$127,000 for the year ended July 31, 1944? A. Yes.

Q. The real capital of that organization consists of the elevator deductions and commercial reserve deductions?

A. That is right, sir.

Q. It has been stated here on several occasions that these deductions are regarded as a permanent capital fund to be repaid to the people who are interested in them, only on the dissolution of the pool? A. That is my understanding of the terms of the contract.

Q. That seems to be borne out by section 4(cc) of your charter, which provides that these moneys are to be paid as, in the absolute discretion of the company, may seem expedient. It also seems to be borne out by a statement that is found in your brief, if I understand it correctly, as to what you do with patronage dividends, excess charges or refund moneys. Tell me if I am right in that. I am referring to page 7 of the copy I have, which would be about page 14 or 15 in the other copy. On that page you say:

"In order to keep the ownership of both the elevator and commercial reserve deductions in the control of active members, the elevator company for years past paid only part of the refund of excess charges in cash."

MR. MILLIKEN: It will be found on page 17 of the other copy.

BY MR. STEER:

Q. The brief goes on to say:

"The remainder has been used to purchase elevator and commercial reserve deductions which have been placed to the credit of the patron member in lieu of cash."

A. Yes.

Q. I understand that when you credit to a patron member a share of elevator deductions in lieu of cash, at some subsequent time you are going to sell that share to somebody else? A. No. The money is used to purchase from estates and others, outlined on page 17, the actual equity and turn it over to the new member, or it may be an old member, at any rate to the new investor. That is a good word to use.

Q. As a matter of fact, there are two types of membership. There is the membership that originates in the payment of one dollar for a share and there is the membership, or there is the class of member who, in addition to having that dollar share, has a share in these commercial deductions or elevator deductions. Is that right? A. That lasts for one year. New members, after delivering for one year under this policy, automatically get a share of the equity in elevator and commercial deduction reserves.

Q. That is to say, on new declarations. If a man becomes a member this year, next year, if you make a declaration of what, for the sake of conciseness, we will call a patronage dividend, then he gets his share of that patronage dividend? A. If the new members who joined last year, who took out membership in the organization, deliver grain they automatically get a half cent a bushel value of these reserves on the basis of this set-up.

Q. And that is credited to them on the books? A. Yes, and they get a statement to that effect.

Q. On the other hand, a man who has not delivered grain and who wants to acquire an interest in these reserves can do so by purchasing from the pool? A. No, from another member. We merely act as intermediary in making the transfer. The pool buys nothing for itself. It cannot.

THE CHAIRMAN: He must be a member.

THE WITNESS: Yes. The board does not make transfers to anyone but members.

BY MR. STEER:

Q. Perhaps this is a legal question which you would prefer Mr. Milliken to answer, but really that reserve fund of yours, whether capital reserve or commercial reserve or elevator reserve, is practically identical with the ordinary capital stock fund of the ordinary company? A. Well, I would not agree to that at all. It may be a legal question which I cannot answer, but from the standpoint of the layman it is not that.

Q. How do you regard it? A. The farmer himself does not own any stock.

Q. What does he own? A. A statement or certificate.

Q. He has a certificate that on the dissolution of the company he is entitled to be paid so much money. Is that right? A. Yes, either by way of discount or accretion.

Q. Discount or accretion? A. Yes.

Q. Apart from dissolution, the only way that owner can dispose of his interest is to sell it back to you and you sell it to somebody else? A. Well, we have already transferred over \$3,000,000 worth.

Q. Quite so, to new members? A. So that they are reasonably liquid.

MR. MILLIKEN: Mr. Wesson told you a few moments ago that he can sell it to any other member. The only person buying is not the wheat pool; any other member can buy it from him.

BY MR. STEER:

Q. I suggest to you that there is a good deal of similarity between the claims people have on these deductions and the claim which the owner of a share in a joint stock company has, and you dispute that. You think that is not right? A. It is a legal question I should not be asked to answer.

Q. The suggestion I make to you is supported, I suggest, to some extent by your own conception of the revolving door. As I gather from your evidence, you have the idea that this revolving door or revolving fund means simply that you are going to keep that \$18,000,000 more or less intact? A. Yes.

Q. As capital? A. Yes.

Q. And that it revolves by reason of the differences in ownership, parts of it being owned by different individuals? A. That is right.

Q. There is another conception of the revolving door, is there not, where it is conceived that a limit of time is placed upon contributions and that the money is taken from the people who contribute later in point of time for the purpose of redeeming the contributions that have been made in the first period. A. I think there is that conception.

Q. That is not your idea? A. No. I would say this for clarification. Our first conception of what is now known

as the revolving door plan was something like this when we first started to take deductions in 1924 and up to 1928. Had the world not turned topsy-turvy and we had continued pooling, we intended to continue taking deductions, and immediately we arrived at the place where we had secured enough, we intended to take the current deductions each year to repay. We ceased pooling, and after those years in which we were trying to rehabilitate ourselves financially, realizing that many of our people were getting old and needed money, and estates needed money badly, we developed the other plan. "Revolving door plan" may not be a correct expression to describe the system. Our conception was a real revolving door.

Q. Your position is clear in any event. You regard this \$18,000,000 as the capital of your organization, and it is the real foundation capital of the organization?

A. Yes, that is right.

Q. Do you make any distinction in buying from estates and others -- A. Yes; estates come first.

Q. I know; but do you make a distinction as between commercial reserves and elevator reserves? A. No. Both go together.

Q. If a man has a certificate for \$100 deduction for elevator purposes, he has to earn the equivalent certificate with respect to commercial deductions? A. Yes.

Q. You buy both at the same time? A. Yes.

Q. Have you any idea what the largest amount would be which would be held by any member of your organization -- referring to these deductions? A. I could not answer that. It would be up into the thousands of dollars with large farmers, and with some it would be very low. The average is

about \$200!

Q. But there is no upper limit to the amount a man may hold. A. No. As long as he is a member he can keep on buying, and in those days, on the basis of the 2 cent deduction, large farmers acquired, whether they wished to or not, a large investment.

THE CHAIRMAN: Is there any advantage in buying up these certificates? If any qualified person desired to buy them, would there be an advantage to him in doing so?

THE WITNESS: I don't know that there is much advantage, but we have known a large number of cases in the bad years where farmers pretty well fixed, wanting to help their neighbours, bought and paid for them, not because they wanted them but simply because they wished to help their neighbours. They took them as security. They were not of any particular advantage, especially in years when the delegates decided that no interest would be paid.

BY MR. ARNASON:

Q. In view of the improved financial position of your company in the last two or three years, have you given consideration to revolving existing capital to a greater extent than at the present time? A. We have not. We have found up to the present time that the amount used was just about sufficient to take care of current cases of debts to estates and to people who ceased farming over a certain age. If that petered out, under certain conditions we might consider revolving the 1924 deductions and turning the whole thing over to new members, but we have not reached that position yet, because it has taken all we think we should do to take care of old people and the estates of people who are deceased.

BY MR. STEER:

Q. I do not know that I am particularly interested in this point, but the Chairman's question suggested this to me: I understood you to say yesterday that these deductions that were being sold at one time for 50 cents on the dollar gradually rose until they are now worth 100 cents on the dollar. There must have been a considerable advantage to a man who bought them at 50 cents and subsequently found he could sell at a dollar? A. Yes; except that, rightly or wrongly, on the basis of the policy laid down by the delegates, as long as we were indebted to the provincial government, the new owner has to take the responsibility of contributing his quota to paying that. That is why it was done. In other words, as nearly as we could figure, we estimated about four years ago that 50 cents on the dollar would be about the worth of the company, and then it got to 60 cents for two years, and then 75 cents and last fall the full 100.

Q. It ought to have been worth 100 last fall. A. That is what the delegates thought.

Q. There is some suggestion, borne out by the decision to which Mr. Milliken has referred, that there is an obligation on the part of the pool to pay interest on deduction certificates. Is that right? A. We have never taken the view that it is an obligation.

Q. But the trial court did take that position, that there was an obligation of some sort to pay 6 per cent on elevator deductions and 5 per cent on commercial reserve deductions? A. That is a legal question, but I understand that the decision made by the trial court could not take effect in 1951.

Q. What I am thinking of is this. In your 1942 report at page 9, you say:

" . . . and when purchased to be transferred on the books of Saskatchewan Co-operative Wheat Producers Limited to the members entitled thereto, subject to the condition that the right to receive interest or dividends on such deductions, or on any undertakings in which such deductions may be invested, shall not be transferred to such members."

You are referring to the transfer of these deductions from one person to another. Do you recall that? A. Yes, sir.

Q. The suggestion I have to make to you is that it is the intention of your organization, when these deductions get into the hands of new members, that any obligation to pay interest which there may be is to be wiped out? A. It is because of the uncertainty of the other position. You asked me if I thought we were compelled to pay interest and I said that the board of directors say no. When we started to transfer deductions from estates to others we made it quite definite that there should not be an obligation, but that does not stop the board from paying interest if they wish. That is all it is for.

Q. So that if in the course of time the door revolves to a sufficient extent, any existing obligation to pay interest on these deductions must be wiped out? A. If there is any at the time. I may say that we declared 3 per cent last year and this year it is paid on all of them in spite of the fact that we do not have to.

Q. May I refer to the 1940 report, and I am referring to this only for the purpose of asking you if this is the typical approach of your directors to the financial problems of the company. Down at the bottom of page 8 you have given

us figures for operating revenue and operating expense and you show at the top of page 9 total earnings of \$4,500,000 odd. Then you show deduction from those earnings of \$1,296,000 odd for depreciation and certain other items leaving a balance of what is described as net earnings of \$2,667,000 odd. From that \$2,667,000 odd payments of \$44,000 odd were made to Saskatchewan Co-operative Wheat Producers Limited, as I understand it, as payment on account of the amount owing to the province? A. That would mean most of it.

Q. Interest is provided for in the figures given above and that leaves a balance of \$1,622,000 odd which the directors have to deal with. Then your report says:

"The matter of the distribution of this year's surplus earnings received careful consideration by your directors. At the last annual meeting of delegates, following a lengthy discussion, a resolution was passed recommending to the board that, in the event of sufficient earnings being available for the payment of patronage dividends, consideration should be given to the retirement of the first year's deductions in part, or in full, as part of the policy of the payment of patronage dividends, in order that shareholders who were allotted shares subsequent to 1932 might be given an investment in the company."

That is the point you referred to a few minutes ago as the other aspect of the revolving door idea? A. Yes.

Q. The report goes on to say:

"Because of conditions surrounding the handling and marketing of wheat for the current year, which will be referred to later in this report, your directors have been

faced with two special problems involving financing. Because of the slow movement of grain, which has resulted in a large volume being held in country elevators, larger sums of money have been required to finance the handling of the current year's crop. It is not always appreciated that under our agreement with the Canadian Wheat Board we must use our own funds and paymaster arrangements to make the initial payment --"

and so on. You refer to your having financed the crop?

A. Yes.

Q. The report also states:

"The second problem involves the provision of the greatest possible amount of storage space."

And you come to the conclusion that instead of using that money for the purpose of paying the largest amount of excess earnings return to your members, you will use a considerable part of it for building storage space and will confine patronage dividends to \$500,000 that year? A. It is five years ago but it seems to me we merely delayed payment of patronage dividend, using the money to build temporary storage and made the payment later. It might have been the year previous.

Q. Perhaps I had better read it: "After surveying the whole problem, your directors were of the opinion that due to inability to deliver wheat because of lack of elevator storage space pool members generally had been unable to secure sufficient funds to meet pressing needs. They also believed that it would be in the best interests of the pool membership for the time being that all available resources of the organization, including the surplus earnings of the company for the year ended 31st July, 1940, should be directed toward providing increased storage space at those stations

where this space was urgently needed. Your directors are of the opinion that by using the resources of the organization for this purpose, thus enabling growers to secure the full amount of the initial payment on such grain as may be delivered under the present quota, the organization would be rendering a greater service than would be the case if the funds used in this constructive program were distributed on a patronage basis. The board therefore decided that the surplus earnings of the organization for the year ended 31st July, 1940, amounting to \$1,622,668.07, should be allocated as follows:

For transfer to reserve account, being the amount required to bring working capital up to six million dollars	\$ 889,230.22
For transfer to excess charges refund season 1939-40, to be distributed to members as a patronage dividend at the rate of one-half cent per bushel on deliveries for the season 1939-40 - the time, form and manner of such distribution to be in the discretion of the board. Meanwhile this sum to be retained for the construction of additional storage space	500,000.00
For transfer to undivided profits account. .	233,437.85."

Assuming that I have read it correctly, that refreshes your memory? A. I remember it well.

Q. What I have in mind is this. What your directors were doing at that time was anticipating some emergency that might arise in the future, or they felt that they were facing an emergency and for that reason had to add large sums to reserves? A. The delegates agreed that the money should

be returned to build temporary annexes to service the membership. I should like to add that we ourselves built approximately 27,000,000 bushels of country elevator space to store grain in order to assist our people. We believed that instead of paying moneys at that time it was more in the interests of the people to do that, as we say in the report.

Q. Quite so; and in the grain business that kind of emergency is likely to arise, and the situation has to be faced as it arises? A. Yes.

Q. Am I right in thinking that that \$233,437.85 carried to undivided profits account would be found in one or other of these sums on page 52 of your 1944 statement? A. I do not need to look at it. I know where it is. It is in the elevator reserve.

Q. Perhaps you will point out to me where it is?

A. I don't think it is on that sheet at all. Here it is, reserve accounts, \$4,546,732.83. The undivided surplus account is a new figure altogether since that time. This amount is earmarked either for interest or on the basis of the bushels delivered the year before. All that small undivided surplus was put to this general reserve following that year.

Q. That is on page 48 of the 1944 statement, and the \$233,000 about which I had been speaking is a part of an amount that appears there as \$4,546,732.83 headed "Reserve Accounts"? A. I think that is right, sir.

MR. MILLIKEN: You mean page 52, not 48?

MR. STEER: I said 52 and the witness says 48. I would not be surprised if they were the same thing.

THE WITNESS: It all works through, as the accountants say.

Q. On page 2 of the copy of your brief that I have -- I suppose it would be page 4 or 5 in the other copy -- you make this statement: "The farmers did not want just another elevator company, they wanted an elevator system in which the fruits of cooperative marketing would be reflected in the returns they received for the products of their farms." You recall that? A. Yes.

Q. I was under the impression that the pool movement had its inception first of all in the desire of the western farmer for a continuation of the wheat board? A. That was the basis of the first contract pool.

Q. And secondly that the movement gained impetus through the visit to western Canada of Mr. Sapiro some time prior to the organization of the pool? A. He struck the match that lighted the fire.

Q. Mr. Sapiro's idea was orderly marketing over the whole year? A. Yes.

Q. Rather than in the three months' period to which you refer in your brief. I wonder if there is a mistake?

A. No, sir.

Q. Wait a minute; there might be. A. No, sir; there is not.

Q. On page 3 of the copy I have, which may be page 6 or 7 in the other copy, there is this statement: "In the years prior to 1941 the farmer delivered the greater part of his grain during a three months' period following harvest"-- A. That is right.

Q. 1941? A. Yes.

Q. What is the significance of 1941? A. Because since 1941, owing to the fact that space has all been taken up, the wheat board has issued instructions for quota

deliveries of so many bushels to the acre, so all grain would not be delivered in the first three months.

Q. You are talking about deliveries as distinct from marketing. I understood that from the time the pool began operating, while a man may have delivered his grain in the early part of the crop year, his ultimate return depended upon the operations of the whole year? A. For the whole?

Q. Yes. A. Yes, sir.

Q. That situation existed from 1923 or 1924 on?

A. It did until 1941, sir, as long as the farmers could get grain into the elevator. As long as they could get it into the elevator they delivered it because they needed money in the fall of the year.

Q. Following the adoption of the pooling system the amount he realized for his grain depended upon the year's price rather than the price at the time he delivered?

A. Yes, but it did not stop the country movement. It made no difference in the delivery.

Q. I am suggesting that the agitation with respect to the ownership of elevators by pools, the agitation among the farmers for their own elevator systems, followed the organization of the pools rather than preceded it? A. Oh, yes.

Q. That is right? A. Yes. That is what we say in the brief.

Q. I want to ask a question or two with reference to a statement I find on page 6 of the brief, which will be page 13 or 14 on the other copy. I read the judgment and I gathered from it that all interest on both elevator deductions and commercial deductions was paid up to the year 1930. I gathered this morning that you were not able

to say whether that was so or not. A. Interest?

Q. Yes. A. I don't think it was paid after 1928.

Q. Here is the statement contained in the judgment, and perhaps we ought to get the facts in regard to it.

MR. MILLIKEN: I would say that the statement in the judgment is correct. Interest was paid on both elevator and commercial reserves until July 1930.

MR. STEER: That is what the judgment states?

THE WITNESS: That is the time the money was paid out, Mr. Milliken.

BY MR. STEER:

Q. The judgment says that all payments on both types of reserve was made up until the year 1930. Mr. Milliken says that is so.

MR. MILLIKEN: Yes, 1930. Interest on elevator deductions was not paid until 1941, and that is why there is reference to 1941.

THE CHAIRMAN: I am glad that counsel recognize the accuracy of the judgment.

MR. MILLIKEN: You would be surprised, Mr. Chairman, how many places I disagree with it.

BY MR. STEER:

Q. That means that on these elevator deductions 6 per cent interest was paid up to 1930 and on commercial deductions 5 per cent interest was paid until 1930? A. I am not sure that is correct.

Q. If the judgment is correct and if what Mr. Milliken says is correct? A. I will not get into a legal argument, but interest may have been earned one or two years prior to the time it was paid out. It may have been paid up to the

end of July, but we did not pay interest in the year 1930 earned in that year.

MR. MILLIKEN: We are not saying that.

THE WITNESS: O.K.; then there is no difference of opinion.

BY MR. STEER:

Q. I do not want a legal argument any more than you do. What I want to ask you is this. We will come back to patronage dividend payments commencing in 1931, \$522,000, and go to the year 1942, which is a period of twelve years. As I figure it, the total of these payments by way of patronage dividend -- and it was not all paid in cash? A. No.

Q. The total of these patronage dividends was \$4,547,000 odd? A. I did not figure it. I take your word for it.

Q. I think that is fair enough. If you had paid interest during that time you would have paid 6 per cent on \$12,000,000 annually and you would have paid 5 per cent on \$6,000,000 annually. That is right? A. And that would just about equal the cost of retiring the 1929 overpayment each year.

Q. And that amounts to \$1,020,000 a year? A. The payment is about \$1,100,000 to the government.

Q. I am not interested at the moment in the payment to the government. A. But our delegates were.

Q. Surely, and their point of view might be quite different from mine. What I suggest to you is this. Assuming that the same people were entitled to interest as were entitled to these patronage dividends, the amount which would have been payable as interest over that twelve-year period would be \$12,240,000 as against patronage dividends that were

received of \$4,547,000? A. That is true, except that it was not earned and therefore was not saved.

Q. The interest? A. No.

Q. Do you say interest was not earned? A. It was not earned and therefore could not be saved in the years 1936, 1937 and 1938. Depreciation reserve was not earned in 1936 and 1937, and only 1 per cent in 1938. How could you earn interest if you could not earn enough to set up depreciation?

Q. I will put it this way. If you made earnings sufficient to justify your directors, as you thought, in declaring these patronage dividends -- A. Yes. We were rehabilitating ourselves at that time.

Q. And if, instead of paying patronage dividends, you recognized an obligation for 6 per cent and 5 per cent interest, the amount of money you would have had to pay out would have been three times as much as you did actually credit to members? A. Except that there is this difference.

MR. MILLIKEN: Just a moment. This may be an interesting hypothetical question, but the organization does not recognize that it has an obligation to pay 6 per cent and 5 per cent interest from 1930 to date. That is the very question in dispute.

MR. STEER: I am not suggesting for a moment --

MR. MILLIKEN: But you are asking the witness to assume that he is under that obligation.

MR. STEER: I am asking him to assume it, yes.

THE WITNESS: And I am not assuming it, sir.

MR. STEER: We will say the figures speak for themselves. That is all I have to say.

BY MR. NADEAU:

Q. Have you any members outside the province of Saskatchewan? A. Yes, just a few scattered along the borders of Alberta.

Q. Have you any country elevators outside Saskatchewan? A. No.

Q. When you decided to reduce your handling charges, I understand that you did not consult the elevator line companies? A. Just the pools.

Q. You just consulted the two other pools.
A. Correct.

BY THE CHAIRMAN:

Q. There would not have been the same unanimity if you had consulted the line elevator companies, would there?
A. I am afraid you are right, sir.

MR. MILLIKEN: I should like to point out that this paragraph appears as paragraph No. 9 in the first growers' contract, with regard to deductions:

"Any unused balance of reserves and surpluses shall stand in the name of the association and be owned by the members and shall, when in the opinion of the directors a distribution shall be made or upon a dissolution of this association, be divided in the same proportions in which it was contributed by the members."

THE CHAIRMAN: This is prior to 1931.

MR. MILLIKEN: This is the original growers' contract. It is clear that the original contract provided that these reserves were to be retained by the organization for such time as it might keep them, or until it was dissolved.

THE CHAIRMAN: Did that contract remain in effect

after 1931?

MR. MILLIKEN: So far as these deductions are concerned, yes. That contract provided for deductions of 2 cents a bushel, as found in paragraph 4 (f), and says nothing about paying interest. But the second contract, starting in 1928, under which a very substantial percentage of these deductions had been taken, provided for deductions, and very definitely states that these deductions should be retained, with or without paying interest thereon. And there is a similar clause about the company being able to keep deductions until in the discretion of the directors they care to refund them, or upon dissolution they must be repaid. I might draw attention to the fact that those clauses are in these two contracts.

BY MR. MILLIKEN:

Q. Then, I should like to ask you one or two questions: Mr. Parker asked you this morning if you thought your system of delegating control of your organization gave you any better representation as a company, because you had said in your brief that it was something like sending a proxy to Brazilian tractor ---

MR. PARKER: It is Brazilian Traction.

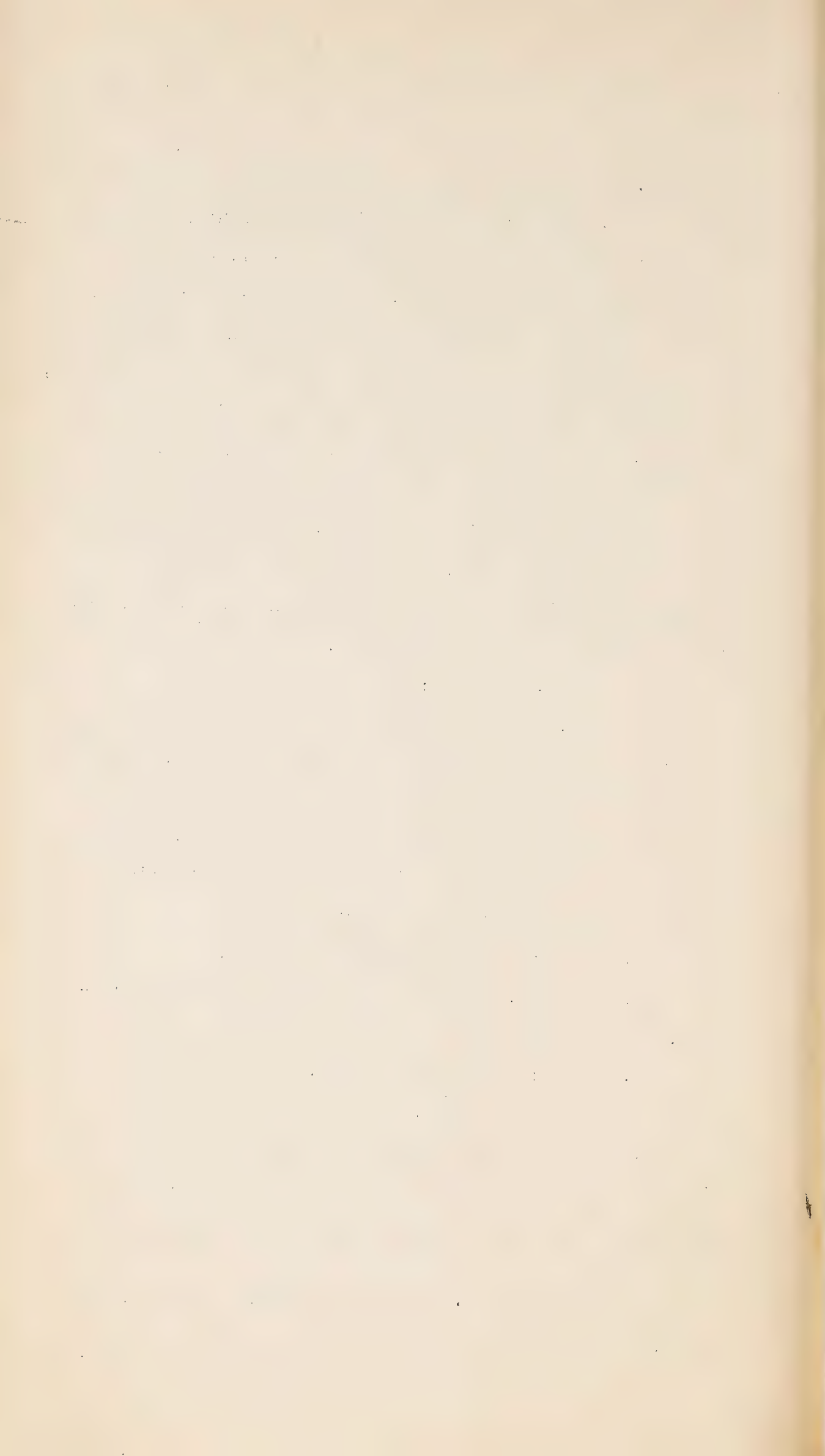
MR. MILLIKEN: I did not know the name of the company.

MR. PARKER: I wish I did not.

BY MR. MILLIKEN:

Q. These delegates must be members or farmers living in the sub-district which they represent, is that correct? A. Yes, they must live right in among their own people.

Q. And must be elected every year? A. Yes, every year.



Q. And not only must live in that sub-district, but they must be still engaged in the production of grain.

A. Yes.

Q. They cannot be retired farmers living in a small town in the sub-district, and also at the same time be delegates. A. No; it is grain and livestock, now.

Q. I happen to be a shareholder of Standard Oil. The secretary of that organization, whom I have never had the pleasure of meeting, sends me a letter each year asking me to appoint him my proxy to appear in respect of elections at the annual meeting of the Standard Oil company. Do you think he has the same knowledge and interest with respect to my affairs as a delegate has in your wheat pool? A. Definitely not.

Q. And is not that what you mean when you say that this company is controlled by its shareholders?

MR. PARKER: My learned friend should not suggest what the witness means.

THE WITNESS: Well, let me suggest it myself by saying that in my opinion--and we say this in our brief--we know of no system which can equal the system we have, which gives the right to the grower to control his own organization.

BY MR. MILLIKEN:

Q. If you knew of a better one you would not use it? A. Correct -- well, if we knew of a better one we would use it.

Q. And how long do these annual meetings of yours last -- the meeting of your delegates? A. Nine or ten days every November.

Q. Going into details of what? A. All the business and all the ramifications of every part of the

organization, plus some very lengthy discussions on policy for the future.

BY THE CHAIRMAN:

Q. It sounds like a convention. A. Well, we still call it an annual meeting.

MR. PARKER: There must be good entertainment.

BY MR. MILLIKEN:

Q. Mr. Wesson, with regard to the reduction in charges that your organization has made this year in connection with the handling of grain, so that the farmer is getting more money, at the time he delivers, has that ever been done before in your experience in the grain business? A. Yes, it is common practice of line elevators to do it every year.

Q. To do it every year? A. Yes.

Q. Where? A. At some point where they operate elevators.

Q. But not all over the territory. A. I can just remember where they reduced flax all over the system to 5 cents.

Q. When? A. Last fall.

Q. After you did? A. Before.

Q. Before you did. A. Yes.

Q. Before you reduced from $7\frac{1}{2}$ cents to 3 cents, the line elevators had generally reduced from $7\frac{1}{2}$ cents to 5 cents? A. And we reduced ours to 5 right after.

Q. And later reduced to 3? A. Yes.

Q. And it is not uncommon practice for these prices to be reduced or cut in the grain business? A. It is common practice.

Q. Prior to 1931, when your organization was operating a contract wheat pool, and also operating an elevator

system, your elevators at that time took wheat in and made charges for taking it in from anyone, is that correct?

A. Yes.

Q. And cleaned wheat for anyone who wished to have it cleaned? A. Yes.

Q. And stored wheat for anyone? A. Yes.

Q. That is, both members and non-members. A. Yes, that is correct.

Q. Of the wheat pool. A. Yes.

Q. And it is doing exactly the same thing today, is it not? A. Not exactly, because ---

Q. I am asking about cleaning. A. Oh, yes.

Q. And handling and storing. A. Yes.

Q. And it is doing it in exactly the same way?

A. Yes.

Q. As it was when it was operating the wheat pool.

A. Yes.

Q. Your elevator system. A. Yes.

Q. And in addition to that, as I understand it, your elevator system really differed in its operations prior to 1931 and afterwards, inasmuch as prior to 1931 it did not buy grain from anyone. A. Correct, it stored in warehouses for everyone, both pool and non-pool.

Q. It did not buy from anyone. A. No.

Q. And after 1931, it bought wheat from anyone who wished to sell to it, both members and non-members.

A. Yes.

Q. And it ran a voluntary pool for those who did not wish to sell, but had their wheat handled in a pool -- for its members, and for anyone other than its members.

A. Yes.

Q. It handled the voluntary pool for non-members.

A. No, just members.

Q. Members only were in the voluntary pool. A. Yes.

Q. Your wheat pool prior to 1930, along with the Alberta and Manitoba wheat pools had a central selling agency called the Canadian Co-operative Wheat Producers.

A. Yes.

Q. And it exported grain, did it not? A. Yes.

Q. And it was exporting grain the same as it is exported today, was it not? A. Partly; we did a lot of exporting direct, without relationship to Winnipeg or any other futures market.

Q. But you also exported other grain you had to buy in the Winnipeg market. A. Yes.

Q. The same as you buy wheat now. A. Yes.

Q. Because, as you said this morning, it is impossible to keep the identity of wheat separate. A. Yes.

Q. When you get wheat to Fort William you cannot tell whether it is your members' wheat or that of non-members. A. It is all No.1 or No.2 Northern, as the case may be.

Q. I do not know whether you would care to express an opinion, but I notice this morning you said that because a cooperative organization was a voluntary organization everyone would not or did not belong to it; is that correct? Did I understand you to say that everyone would not belong to it because it was voluntary? A. Well, they do not.

Q. And Mr. Parker asked you why they do not.

A. Maybe they do not believe in it.

Q. They may not believe in the system of cooperatives. A. May not believe in the cooperative movement at all.

Q. Is it possible that they may not even like the agent? A. Possibly for that reason.

Q. And there are many reasons they do not join a co-operative organization. A. And a good many reasons why they do not deliver to it after they do join. They may not like the agent, and there may be other reasons. There may be no space at the time for them.

Q. They may not like the president, even. A. Probably they do not like the president.

BY MR. PARKER:

Q. Is there any figure you can give us to show the percentage of member and non-member business? A. They are filed, I believe.

MR. MILLIKEN: They are filed for the last ten years, and Mr. Elliott has asked me to file them for earlier years.

THE CHAIRMAN: I understand that concludes the discussion with respect to this brief.

THE WITNESS: May I make a short statement?

THE CHAIRMAN: Not a speech.

THE WITNESS: No, just a short statement.

MR. PARKER: Have you a statement of fact you wish to make?

BY THE CHAIRMAN:

Q. It would have to be a statement of fact; I am sure counsel will make all necessary argument. A. I merely wish to say to this Commission something which has not been asked me throughout this examination; and I anticipated it would be.

Q. I do not think we can take that. A. If you do not wish me to say that, I shall retire, and thank you very much for your courtesy and your patience, and for

that of the gentlemen who sit around the table in front of you.

Q. That is a very pleasant speech, Mr. Wesson.

CHARLES H. G. SHORT

Director, Canadian National
Millers Association,
having been duly sworn,
testified as follows

BY MR. HEWARD:

Q. You are Director of the Canadian National Millers Association? A. Yes.

Q. And you are representing both that association and the Ontario Flour Millers Association? A. Yes.

Q. And you are to present a brief on behalf of both organizations? A. Yes.

Q. Will you state by whom and how the brief was prepared? A. The brief was prepared by you and me, in collaboration, and expresses the views of the two organizations. It has been submitted to and passed by them. I have been delegated by them to appear before this Commission to present the brief.

Q. Will you proceed, then, Mr. Short. A. The brief is as follows:

"I. (a) Canadian National Millers Association is a voluntary association, the members of which are the following flour milling companies:

Lake of the Woods Milling Company Limited

Maple Leaf Milling Company Limited

McDonald & Robb Limited

The Ogilvie Flour Mills Co. Limited

Purity Flour Mills Limited

The Quaker Oats Company of Canada Limited

Robin Hood Flour Mills Limited, and

The St. Lawrence Flour Mills Co. Limited

"(b) The constituent members own and operate twenty-three flour milling plants, the distribution of these plants by provinces being as follows:

Alberta	7
Saskatchewan	3
Manitoba	2
Ontario	8
Quebec	3

"(c) Ontario Flour Millers Association is a voluntary association the membership of which numbers fifty-eight flour mills operating in the province of Ontario.

"(d) The aggregate flour milling capacity of the plants of the constituent members of the two associations represents approximately 88 per cent of the total capacity of Canadian mills.

"(e) Canadian National Millers Association and Ontario Flour Millers Association for the purposes of brevity will be sometimes hereinafter referred to as the 'Millers Associations'.

"II. Canadian National Millers Association and Ontario Flour Millers Association, representing as they do a large part of the flour milling industry in Canada, deem it important to make their representations and submissions to the Commission, because while the cooperatives have not yet commenced the business of flour milling on an extensive scale, there being as far as is known only one co-operative organization which is actually carrying on flour milling business, namely: the Consumers Co-operative Mills at Outlook, Saskatchewan, nevertheless there is increasing evidence that cooperative associations intend to enter the industrial field of flour milling.

"The 'Western Producer', the official organ of the Saskatchewan Wheat Pool, in its issue of November 23, 1944, announced a program of cooperative industrial development in Saskatchewan estimated to cost \$2,500,000 for the utilization of farm crops and other purposes. This development is to be located at Saskatoon where a site has been acquired, and the program, in addition to other plans, calls for an up-to-date flour milling plant which is to be available for the preliminary processing of all grain for the various manufacturing units contemplated, as well as for the production of high class flour. A copy of the relative article in the above mentioned issue of the 'Western Producer' is attached hereto as schedule I.

"Cooperatives, therefore, are now and express the intention to be to a larger extent in future in direct competition with the flour milling business, and it is therefore appropriate under the terms of reference of your Commission and important in the interests of the constituent members of the millers associations that the associations should make their representations and submissions to your Commission.

"At this point it should be made clear that neither the Millers Associations nor their constituent members challenge the right of any persons or groups of persons to carry on the flour milling business or any other undertakings by means of the cooperative method of doing business. They contend emphatically that in a system of free economy and enterprise, which it is so important to maintain, it should be the unchallenged fundamental right of every person and group of persons to carry on any lawful business by such proper and legitimate methods as he or it may select. They maintain, however, that no such

method of carrying on business should be given special privileges, by way of tax exemption or otherwise, which will give it preferential advantages over any other legitimate and proper means of carrying on a competitive business.

"Arising from the presentation of the arguments against exemption from taxation of cooperatives before this Commission, the public already has been subjected to propaganda misleading, illogical and specious in its terms, asserting that there is opposition to the farmer engaging in any cooperative line of endeavour other than farming. The Millers Associations make no such representations and believe, as has been stated, that any citizen or group of citizens is entitled to engage in any sort or kind of legitimate business endeavour. They submit, however, that such businesses, exactly analogous as they are to other businesses in their competitive field, should be placed on the same footing in respect to taxation.

"Attempt has been made to confuse the issue by reference to the freedom from taxation of the Canadian National Railway and the Ontario Hydro-Electric Commission. There are of course many arguments in support of the thesis that those public bodies should not have taxation advantages over other enterprises in their competitive field. The question in respect of taxation of those public bodies has, however, no bearing on or analogy to the question of whether a group of private citizens operating any form of business undertaking for their own benefit and profit is entitled to taxation discrimination.

"III. The propositions which the Millers Associations seek to lay before your Commission, the grounds for which

are set out later in this brief, may be briefly summarized as follows:

"(a) Every person, whether an individual, a partnership, a joint stock company, a cooperative association or other aggregation by whatever name called, which carries on in Canada the business of flour milling, either directly or through a subsidiary, is liable, and has always been liable, to taxation under the Income War Tax Act and the Excess Profits Tax Act.

"(b) No amendments should be made to the Income War Tax Act or the Excess Profits Tax Act which would exempt from taxation thereunder cooperatives or so-called cooperatives which carry on, either directly or through a subsidiary, the business of flour milling.

"(c) There should be no distinction as regards tax liability between cooperative associations or corporations and ordinary joint stock companies; both should be on similar footing in this regard.

"(d) If cooperative associations or corporations are to continue to be immune from liability to taxation as regards the profits of the corporation or association itself and the distributions made to its shareholders or members, or either, then joint stock companies should be granted similar exemption.

"(e) If such exemption to joint stock companies be not feasible from the point of view of the national treasury, then cooperative corporations or associations should be liable to taxation in the same manner as joint stock companies.

"(f) Even if it could be contended successfully that cooperatives by reason of their method of doing business

do not make profits, or should the threat be carried out which is made by certain of the cooperatives that if liable to income tax they will so conduct their business that no profit will be made, then some other form of taxation should be applied to corporations and associations carrying on business in this manner so that they will bear their proper share of the cost of government.

"IV. In support of the foregoing propositions in Section III of this brief, the Millers Associations make the following submissions:

PROPOSITION (a): Every person, whether an individual a partnership, a joint stock company, a cooperative association or other aggregation by whatever name called, which carries on in Canada the business of flour milling, either directly or through a subsidiary, is liable, and has always been liable, to taxation under the Income War Tax Act and the Excess Profits Tax Act.

"Under the provisions of section 9 of the Income War Tax Act, every person resident or carrying on business in Canada is liable for income tax, and by section 2 (1) (h) 'person' includes any body corporate and politic and any association or other body.

"Consequently, cooperative organizations whether they be organized as corporations or associations, are liable to tax upon their income, save those which are expressly exempt under the Act.

"The only exemption which could apply to a cooperative organization is that contained in section 4 (p) of the Act, which provides that:

'Section 4. The following incomes shall not be liable to taxation hereunder:

.....

(p) Cooperative companies and associations. -

The income of farmers', dairymen's, livestockmen's, fruit growers', poultrymen's, fishermen's and other like cooperative companies and associations, whether with or without share capital, organized and operated on a cooperative basis, which organizations

(a) market the products of the members or shareholders of such cooperative organizations under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality, less necessary expenses and reserves;

(b) purchase supplies and equipment for the use of such members under an obligation to turn such supplies and equipment over to them at cost, plus necessary expenses and reserves.

'Such companies and associations may market the produce of, or purchase supplies and equipment for non-members of the company or association provided the value thereof does not exceed twenty per centum of the value of produce, supplies or equipment marketed or purchased for the members or shareholders.

'This exemption shall extend to companies and associations owned or controlled by such cooperative companies and associations and organized for the purpose of financing their operations.'

"It will be noted that not all cooperative companies and associations are exempted by this paragraph 4 (p), but only farmers', dairymen's, livestockmen's, fruit growers' poultrymen's, fishermen's and other like cooperative

companies and associations.

"In 1930 when section 4 (p) was enacted as an amendment to the Income War Tax Act, the then Minister of Finance, after quoting the section to be placed before the House, said: (Debates, House of Commons, session 1930, volume 3, page 2508:)

'That means that any cooperative organization falling within the groups there mentioned, or other like groups, may do business for its own shareholders, provided that.....'

"The groups or classes of persons enumerated are all producers of primary products. The word 'like' used in the enumeration does not extend the genus of the enumeration, but is only sufficient to extend the intent of the provision to any other classes of producers of primary products which are not enumerated therein.

"The enumeration excludes manufacturers or processors. Consequently, if a cooperative organization composed in the first instance of farmers undertakes manufacturing or processing, whether the raw material for manufacturing or processing consists of products of the farm or other things, that cooperative organization ceases to meet one of the tests imposed by section 4 (p), which is that it must be composed of certain primary producers, which excludes manufacturers or processors.

"This interpretation of section 4 (p), which it is submitted is in accordance with the accepted canons of construction, is well expressed in the Special Lectures of the Law Society of Upper Canada, 1944, page 51, as follows:

'.....Paragraph (p) of section 4 was enacted to exempt the income of true cooperatives in a limited

class of primary producers in order to nullify the possibly far reaching effects of the Supreme Court decision.' (Fraser Valley Milk Producers Association vs. Minister of National Revenue, 1929, S.C.R., 435). The tests of a true cooperative under this section are:

- '(a) It must be composed of certain primary producers, which excludes manufacturers or processors;
- '(b)
- '(c)
- '(d)

"A farmers' cooperative organization for the purpose of marketing the direct products of the farm, such as hay, grain, roots, vegetables, fruits and other crops, might meet this test, but a cooperative association composed entirely of persons whose primary vocation was farming could not by reason of this fact meet the test if, for instance, it undertook the business of textile manufacturing and the marketing of the products of such manufacture; nor could it meet the test even though the product used for the manufacture or processing was a product of the farm.

"Grain is a direct or primary product of the farm, but when that grain is manufactured or processed into flour that flour ceases to be a direct or primary product.

"Section 4 (p) of the Income War Tax Act constitutes an exception to the general provision imposing taxes on all persons including corporations and associations. That exception, particularly when it constitutes an exemption, must be strictly construed. Such construction clearly

confines the exemption to cooperatives dealing in primary products only.

"It matters not whether the cooperative organization carries on its manufacturing business itself or through a subsidiary. If it does it in either way it fails to meet the test above enunciated and both it and its subsidiary become liable to taxation upon the whole of their incomes from whatever source derived.

"It is therefore submitted that if a cooperative organization, whether it be composed of farmers, fishermen, poultrymen or others undertakes the business of flour milling, either directly or through a subsidiary, that fact excludes it from the exemption granted by section 4 (p) and makes the whole of its income taxable.

"Under the provisions of the Excess Profits Tax Act, 1940, a person, whether a corporation, joint stock company or other person, is liable to tax under that Act if such person is liable to taxation under the Income War Tax Act, and therefore, unless a cooperative or other organization be exempted from taxation under the Income War Tax Act, it is liable to taxation under the Excess Profits Tax Act, 1940.

PROPOSITION (b): No amendments should be made to the

Income War Tax Act or the Excess Profits Tax Act which would exempt from taxation thereunder cooperatives or so-called cooperatives which carry on, either directly or through a subsidiary, the business of flour milling.

"It is conceivable that representatives of the cooperatives or so-called cooperatives, in view of the fact that engagement in the business of manufacturing or

processing results under the existing legislation in liability to taxation on their part, will urge that the legislation be amended so as to exempt them from their tax obligations, notwithstanding that they engage in manufacturing or processing.

"It is submitted that no such amendments should be recommended. It will be noted by reference to proposition (c) set out in section III of this brief that the Millers Associations contend that there should be no distinction as regards tax liability between cooperative associations or corporations and ordinary joint stock companies. Even if that wider proposition were not adopted, it is submitted that there should be no expansion of the existing exemption so as to grant immunity from taxation to primary producers who engage in other operations.

"It is submitted that the main reason for the selection for exemption of the classes of persons enumerated in section 4 (p) is that it was considered desirable to afford assistance to primary producers.

"When, however, a farmer or other primary producer engages in the business of manufacturing or processing, he ceases as regards that form of undertaking to be a primary producer and there would be no just reason for extending to the farmer in that capacity an immunity from taxation which, rightly or wrongly, was granted to assist another form of undertaking in which he engages.

"The primary producer as such was granted an immunity from taxation for special reasons which then seemed sufficient to parliament, and there is no reason why that immunity should be expanded so as to apply to a field of activity different from that which was originally intended to be benefited by the legislation. On

the contrary, as will be submitted later, there is every reason why the immunity from taxation should not be eliminated, which point will be discussed in dealing with the reasons for the next following proposition.

PROPOSITION (c): There should be no distinction as regards tax liability between cooperative associations or corporations and ordinary joint stock companies; both should be on similar footing in this regard.

"The submissions made in respect of this proposition (c) have reference only to cooperative organizations for the purpose of marketing commodities, and not to those organized for the purchase and distribution of supplies or equipment to their members, as it is the former type of cooperative which competes and threatens to compete directly with the flour milling industry.

"There is no logical or equitable ground for a distinction as regards taxation between marketing cooperatives and the ordinary joint stock company. Both are separate entities or artificial persons by means of which an aggregation of individuals, in the one case the members of the cooperative, and in the other case the members of the joint stock company, seek to carry on trade and business.

"In the case of the joint stock company the capital is supplied by the shareholders; in that of the cooperative it is supplied by the members, sometimes in the form of commodities, sometimes in money, and sometimes in both commodities and money.

"In both cases such distributions or surplus earnings as take place are made to the persons who supplied such capital; that is, to the members of the cooperative, or to

to the shareholders of the joint stock company.

"None of the differences existing between the two types of corporations, the cooperative and the joint stock company, justifies either in logic or equity that one group should be subject to taxation whilst the other escapes all share of the burden of the expense of carrying on the affairs of the country.

"In each case a group of individuals is organized for the purpose of carrying on a trade or business of the same kind for the ultimate prospective advantage of that group.

"In each case the group of individuals avails itself of the laws of the country to incorporate or organize for the purpose of carrying on trade or business.

"In each case the citizens carrying on trade or business by means of such corporate entity, and the corporate entity itself, benefit from the services, facilities, protection and other advantages afforded by the laws and the government of the state.

"In each case, the organization, whether it be a co-operative or joint stock company, trades with a view to profits, uses plant and equipment for processing, manufacturing or other purposes, employs labour, carries stocks and investments from which income is derived, and carries on general industrial and trading operations. The proceeds of those operations result from the labour and capital, whether in money or kind, employed and the resultant net earnings by whatever name called, whether profit, income or savings, and whether distributed to the members, shareholders or others, should be subjected to taxation on an equal and equitable footing.

"It is unjust and discriminatory that one group

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Mr. Short

merely because it avails itself of one method of doing business should escape the responsibility of sharing in the expense involved in providing the services, facilities, protection and other advantages afforded by the laws and the government of the state.

"Reference has been made above to one milling enterprise at present operating under the so-called cooperative methods. In this connection there is an inequality in respect to income and excess profits taxes which grossly discriminates in favour of that mill. Under the price ceiling legislation there is a ceiling on domestic flour which is based on a price of 77-3/8 cents per bushel of No. 1 Northern wheat, whereas the cost of wheat to the millers is on the basis of \$1.25 per bushel of No. 1 Northern wheat, that being the price guaranteed to the farmer by the dominion government. Under the price ceiling legislation all mills, including the so-called cooperative mill, receive a drawback from the Canadian Wheat Board of the difference between the price guaranteed to the farmer by the government of \$1.25 per bushel basis No. 1 Northern wheat and the price ceiling in the domestic market basis 77-3/8 cents per bushel No. 1 Northern wheat.

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The milling industry, by voluntary agreement with the government because of its involuntarily subsidized position in the domestic market, is restricted to 116-2/3 per cent (less 40 per cent tax) of its standard profits. Any profits it makes above this figure are returned to the commodity stabilization corporation to off-set to that extent the drawback received from the Canadian Wheat Board. This means that in effect the milling industry are foregoing their right to a return of the refundable portion of their income and excess profits taxes on their flour milling operations.

"The milling industry has operated at its peak production throughout the war to furnish flour required by Britain and our allies, and in its previous history never has worked under comparable pressure. Despite this fact, it has voluntarily agreed, as above stated, to a restriction of its earnings to 116-2/3 per cent of standard profits (less 40 per cent taxation) and it is subject to all the governmental rules in respect to limitation of expenditures to which reference is later made. The consumers cooperative mill, however, by reason of exemption from taxation, has a free hand in these matters. It received the drawback from the Canadian Wheat Board in common with the rest of the milling industry in respect of its domestic milling, which owing to its exemption from taxation it in no part repays. Although benefiting with the rest of the milling industry from an abnormally heavy production by reason of export business under mutual aid, the cooperative mill, unlike the rest of the milling industry, is permitted to enjoy the results of that abnormal production exempt from income tax or any form of restriction upon expenditures. It is thus able to acquire war profits from operations which by its own admission are fifty per cent export and therefore financed under mutual aid. There could, it is submitted,

be no clearer example of the complete and unfair freedom from restrictions, rules and regulations enjoyed by a so-called cooperative as contrasted with its business competitors operating exactly in the same fashion in both the domestic and export markets.

"It has been argued that a cooperative corporation should not be subject to taxation because in doing the business of marketing commodities it acts solely as the agent of the respective members from whom the commodities are obtained.

"It is submitted that this argument is fallacious. It would rarely be feasible to identify any particular commodities which are the subject of a marketing contract with the member or members from whom those commodities were obtained.

"The commodities received from the various members are pooled according to kind and class, and the commodities of the same kind and class received from various members lose all identity or connection with the respective members as soon as they enter that pool.

"Under normal conditions and in an uncontrolled market, produce of the farm marketed in July may command a very different price from the same kind and class of produce marketed in August, but the farmer who brings in his produce in July and he who brings it in in August may receive the same price upon the ultimate distribution of the proceeds of sale among the members on the basis of the produce obtained from each.

"Furthermore, if the cooperative corporation in carrying on the marketing were a true agent of any member or the members as a whole, then the purchaser of the goods marketed who had a claim in respect of his purchase, either in damages or otherwise, should be able to enforce that claim against the particular member or the aggregate of the members as the

principal or principals of the agent.

"It is hardly likely that those putting forward the argument that the cooperative is merely the agent of its members would accept that conclusion, but if it be not correct, then the cooperative is not in truth the agent of the members.

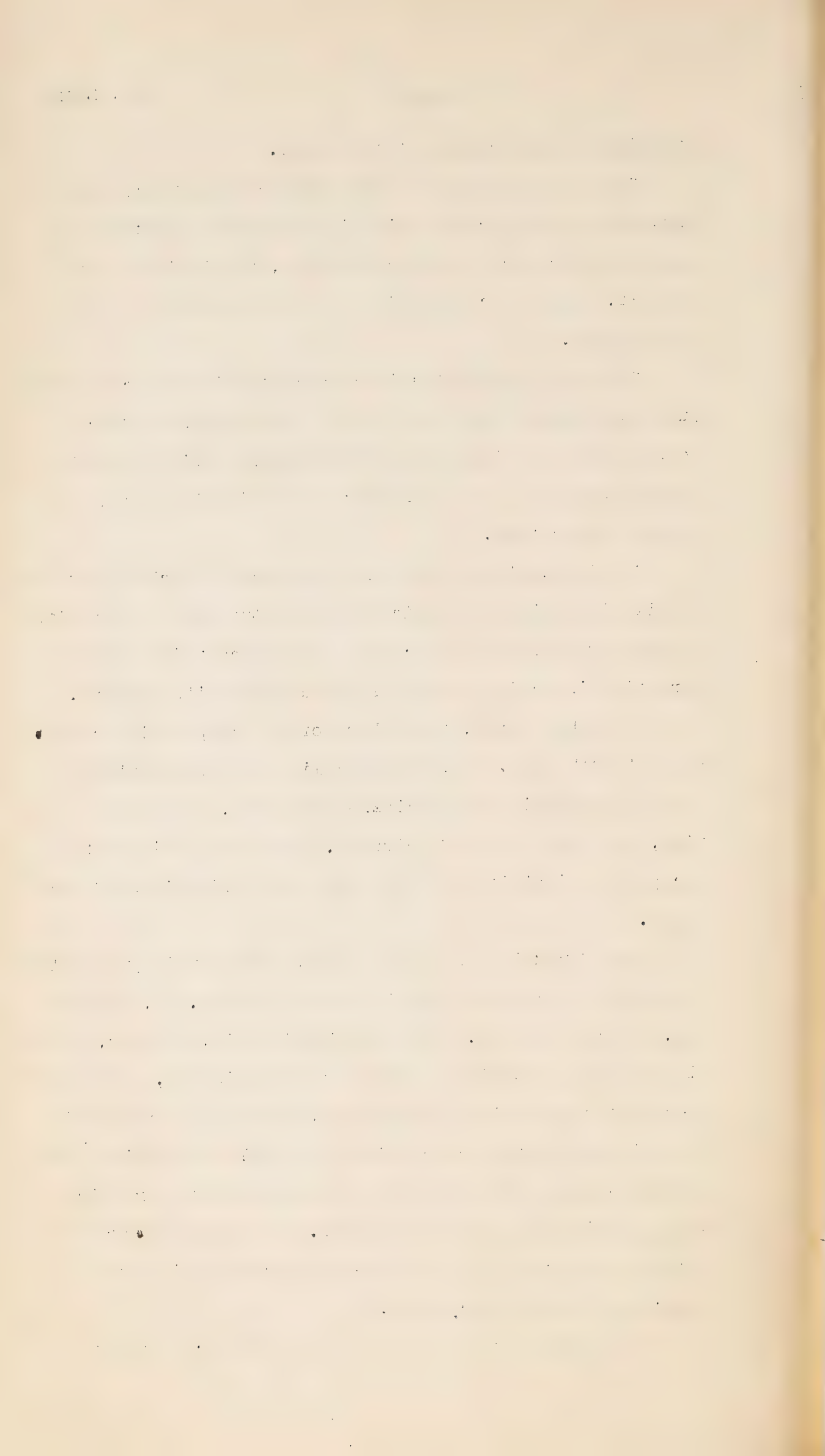
"It may be suggested in connection with the contention just put forward that many of the statutes under which cooperatives are incorporated expressly provide that the members shall not be liable for the obligations or debts of the corporation.

"It is submitted that the existence of such a provision entails in equity and logic the forfeiture of the benefits of the argument that the cooperative in carrying out the marketing is acting merely as the agent of its members.

"In other words, the members of the cooperative cannot have it both ways. They cannot claim the tax advantages of a relationship of principals and agent, and at the same time, with any sense of fairness, ask to be entitled to escape the liability for the debts and obligations of such agent.

"The foregoing arguments in support of this proposition (c) deal with cooperatives in their simplest, or, shall we say, their true form. The real situation is, however, as has already been established before this commission, that many so-called cooperative organizations have gone far beyond the original or true conception of a real cooperative and differ fundamentally from the real cooperative for which tax exemption was provided in 1930. The forms of organization and structure of the modern so-called cooperative are numerous, varied and complex.

"The following are some of the differences from the



pure cooperative which are to be found in the various forms of so-called cooperative organizations as they exist in Canada to-day:

(i) There are shareholders as well as members, and dividends or interest are paid upon the shares.

(ii) The organizations acquire title of ownership in the commodities delivered to them. In other words, they do business as principals and not as agents.

(iii) The managements of the organizations have complete freedom of action as to what such organizations do with the proceeds of the commodities which they acquire.

(iv) They acquire commodities from others than members, and in fact in the case of grain dealings are obliged by law to do so.

(v) They have organized numerous interlocking subsidiaries and affiliated corporations.

(vi) They engage either directly or through subsidiaries or affiliated corporations in manufacturing, in processing, in printing and publishing, in insurance, and in other undertakings.

(vii) They effect borrowings from governments and others in substantial sums.

(viii) Their obligations in regard to repayment to members and others from whom they acquire commodities are sometimes subordinated by law to the claims of other creditors, such as the provincial governments.

(ix) They have accumulated, largely as a result of their immunity from taxation, substantial reserves. As a result of this accumulation of tax free profits, which is denied to their joint stock company competitors, they are steadily getting bigger and more powerful, and the unfairness

of the competitive advantages thus afforded to them is being steadily aggravated.

"The cooperatives, through their legal or de facto exemption from income tax have enjoyed many unfair and discriminatory advantages over their business competitors. As a result of income tax department rulings and regulations, ordinary businesses must keep to pre-war average standards in respect to advertising, promotional and various overhead expenditures. Expansion out of their own savings or profits has become almost impossible for most ordinary businesses. On the other hand, the cooperatives have expanded through the use of savings or profits which have not been taken away through taxation. By reason of their immunity from taxation the cooperatives, in contrast with ordinary business, are able to steadily increase working capital without let or hindrance.

"Cooperatives who conduct operations in an exactly analogous fashion with joint stock companies have been enjoying benefits and advantages over ordinary business to such an extent that the ultimate extinction by the cooperatives of all ordinary businesses which have been subjected to increasingly heavier taxation could not have been made more certain and inevitable if that had been the set purpose and intent of section 4(p) which it is respectfully submitted is not the case.

"It is submitted that the exemption granted by the existing law (section 4(p) of the Income War Tax Act) to cooperatives was intended to apply only to bona fide cooperative organizations (or the classes indicated in section 4(p) of the Income War Tax Act, namely: primary producers) which are real cooperatives.

"This is the proper inference to be drawn from the

language of the section, which states that the organizations must be organized and operated on a cooperative basis, and subject to the twenty per cent exception must market the products of members or shareholders and and pay them the proceeds of the sales on the basis of quantity and quality, less necessary expenses and reserves.

"This interpretation of the act is supported by the statements of the minister when the amendment to the act was introduced in 1930.

"In the extracts from the debates, House of Commons Session 1930, Volume 3, page 2508, the then Minister of Finance stated in introducing the resolution exempting cooperatives from income tax:

"The intention here is to exempt bona fide cooperative associations and companies from income tax.'

See also at page 2508:

"Mr. Hanson: . . . I would be curious to know why the arbitrary figure of 20 per cent was tkane; it seems to me that as these cooperative companies grow they spread out and make money; they become trading corporations and in principle they cease to be cooperative associations. Where they become purely merchandizing companies and the cooperative principle is disregarded, they ought to pay income tax.

"Mr. Dunning: That is right.'

"The submission contained in proposition (c), however, goes further than the contention that the exemption provided for in section 4(p) of the act (which, as stated above, does not exempt cooperative milling) should be strictly applied. The submission is that the act should be

amended so that an exemption will no longer be granted to cooperatives of any kind.

"The grounds urged in support of this are the following:

(i) That, as urged earlier in this brief, there is no reason in equity or logic for making a distinction so far as the burden of taxation is concerned between various methods of carrying on trade or business.

(ii) That the burden of taxation borne by other methods of doing business has been greatly increased since 1930 when the exemption was first enacted.

"In 1930 the rate of tax for corporations and joint stock companies was eight per cent of income in excess of \$2,000 per annum. At the present time the minimum tax is forty per cent, and in some cases rises as high as eighty per cent, and the deduction of \$2,000 is no longer permitted.

"In 1930 the tax on individuals was comparatively light. Now it has become in all cases a minimum of at least thirty-seven per cent of taxable income, and in some cases it has risen to almost confiscatory dimensions.

"iii) That cooperatives and so-called cooperatives have developed, enlarged and increased in numbers and size to such an extent that they now comprise a substantial part of the trade, business and industry of the country, and it is unfair that they should escape their share of the burden of the expense of carrying on the affairs of Canada, and that consequent additional burden should be placed upon businesses carried on in other ways and upon other taxpayers.

(iv) That there are so many complex developments and variations in the constitutional structures and methods of carrying on business of the cooperatives and so-called cooperatives, that it is increasingly difficult to determine which organizations are and which are not operated on a

true cooperative basis:

(v) That the immunity, legal or de facto, from taxation, which has enabled and continues to enable cooperatives or so-called cooperatives to build up large reserves, has given and gives them unfair and improper advantages over other organizations which compete with them in the same business fields.

"An answer sometimes made to this argument is that such competition would not be a matter of concern, as it would result in the lowering of the prices of the commodities concerned and would consequently benefit the consumer.

"That answer it is submitted is short-sighted and will not bear analysis. Such unfair competition must eventually lead to the elimination of the competition operating under the unfair disadvantage. Elimination of joint stock company competitors would leave the cooperatives and so-called cooperatives alone in the field. The next stage would be elimination of the weaker cooperatives by those who were in a stronger position as to reserves, with consequent progression towards monopoly and its evils.

"The counter argument that monopoly can occur as a result of stronger joint stock organizations eliminating the weaker overlooks the fact that the development of such strength is not brought about by tax discrimination as it is in the case of the cooperatives through the immunity, legal or de facto, which they have enjoyed.

"A further factor which displays the shortsightedness of the answer above referred to is that to the extent that the competitors of the cooperatives and so-called cooperatives, whether such competitors be joint stock companies, partnerships or individuals, are eliminated by the unfair burden of taxation, the return to the national

treasury by way of taxes is proportionately reduced and eventually would be eliminated.

"The need for revenues by the national treasury would make it necessary to raise the required contributions from the cooperatives and so-called cooperatives by some means of taxation.

"Consequently, the ultimate position would be that the cooperatives would be subject to taxation and the prices at which they sell their commodities would be increased in consequence, but that in the meantime their competitors had been ruined by the intervening tax discrimination.

"When discussing Proposition (c) it is appropriate to deal with an argument which appears to have been put forward to the commission in Alberta that it would be considered a breach of faith if the dominion government attempted to tax "accumulated savings" of cooperatives before they were distributed to their owners.

"This contention, it is submitted, is untenable. It is no more a breach of faith to eliminate an immunity from taxation than it is to impose a tax which previously did not exist. The fact that a government has not previously imposed a tax is not to be construed as an implied undertaking that such a tax will never be imposed. Similarly, the fact that a certain part of the community has been exempted, whether rightly or wrongly, legally or de facto, from taxation does not imply an undertaking that such concession will be continued for ever.

"The granting of a tax concession to certain kinds of cooperatives with a view to giving to a type of industry (primary production) assistance which was then thought desirable, does not involve the eternal perpetuation of that concession, particularly where the general tax structure

has so changed that perpetuation of the concession imposes grave hardships on others.

"The substantial changes in structure, nature and extent which have taken place in the cooperatives and so-called cooperatives in Canada since the concession was first obtained and the evident tendency to attempt to bring under the umbrella of tax immunities organizations which were not contemplated when the tax concession was originally granted, leave the cooperatives and so-called cooperatives in a weak position in seeking to perpetuate the concession and in charging bad faith if it be not perpetuated.

"The question has been raised as to why, if joint stock companies object to the competitive advantages afforded by tax concessions to cooperatives, they "do not become cooperatives".

"The answer is of course that a joint stock company cannot become a true cooperative because its shareholders or members are not the persons from whom it acquires the commodities necessary for the purpose of carrying on its business. The only way in which a joint stock company or other ordinary trader can "become a cooperative" is to sell out to a cooperative organization, as has been done in some cases.

"In this connection the factor already referred to should be borne in mind, namely: that as a business or undertaking moves from the taxpaying to the non-taxpaying category, the tax base for the national revenue is decreased to that extent and either taxes must be increased on the remaining taxpayers or new bases of taxation found.

"Proposition (d): If cooperative associations or corporations are to continue to be immune from liability to taxation as regards the profits of the corporation or association itself and the distributions made to its shareholders

or members, or either, then joint stock companies should be granted similar exemption.

"Proposition (e): If such exemption to joint stock companies be not feasible from the point of view of the national treasury then cooperative corporations or associations should be liable to taxation in the same manner as joint stock companies

"Propositions (d) and (e) can best be dealt with together.

"In the preceding parts of this brief the Millers Associations have sought to establish that there should be no distinction as regards tax liability between cooperative associations or corporations and ordinary joint stock companies, and that the legal or de facto distinction which exists or has been claimed in the past constitutes an unfair discrimination between competitive businesses.

"If, as is submitted, those propositions are correct, then there are two methods of putting the two kinds of corporations on a similar footing:

"The first is to give joint stock companies a similar exemption to that granted to cooperative organizations, both as regards the profits of the companies themselves and the distributions made to their members or shareholders.

"This suggestion does not constitute an entirely novel idea. The United Kingdom income tax system has gone some way towards such an objective. Under that system an ordinary joint stock trading company, in so far as the normal or standard rate tax is concerned, is taxed on the full amount of its profits. In respect of so much of those profits, however, as are paid out in dividends to the shareholders, it may deduct from the dividends income tax at the same standard rate and retain the deduction as part of its own funds in reimbursement to that extent of the tax assessed on the company. The consequent result is that a joint stock

trading company bears no normal tax on its distributed income, but must pay the normal tax at a standard rate on its undistributed income.

"The shareholder in turn is entitled to a credit against his personal income tax liability of the amount deducted from the dividend by the Company in reimbursement of the tax which it has paid.

"The foregoing remarks in regard to the United Kingdom tax system apply to the normal tax at the standard rate, and not to the special or extra taxes imposed in connection with the present war.

"In order, however, to put a joint stock company in Canada on a parity as regards taxation with cooperative organizations it would be necessary, if the latter are to go untaxed both as regards their own earnings and the distribution made by them, to eliminate all taxation imposed upon corporations, both in respect of profits distributed and profits retained, as those are the advantages now enjoyed by cooperative organizations now exempt from tax.

"It is realized, however, that such a method of avoiding discriminatory taxation might not be feasible in Canada for various reasons.

"If this be the case, then the second method is that which should be applied for the purpose of remedying the situation, namely: that cooperative organizations should be liable to taxation in the same manner as joint stock companies.

"In the preceding parts of this brief, the Millers Associations have sought to demonstrate that such a remedy is logical and equitable as applying similar taxation to two different methods of carrying on business with the same objective, namely: the pecuniary profit or advantage of the persons adopting those methods.

"That being the case, both should be similarly taxed.

"Proposition (f): Even if it could be contended successfully that cooperatives by reason of their method of doing business do not make profits, or should the threat be carried out which is made by certain of the cooperatives that if liable to income tax they will so conduct their business that no profit will be made, then some other form of taxation should be applied to corporations and associations carrying on business in this manner so that they will bear their proper share of the cost of government.

"It is contended on behalf of the cooperatives and so-called cooperatives that they are not liable to income tax because they do not make profits.

"The argument appears to be that a cooperative so-called cooperative organization in marketing the commodities in which it deals is acting only as an agent of its members and of the non-members from whom it obtains such commodities.

"In other words, that it is the members or other suppliers of commodities who are marketing those commodities through the agency of the corporation.

"In the preceding parts of this brief the Millers Associations have endeavoured to show that this argument is fallacious even as regards the so-called cooperative.

"The argument becomes particularly specious if it is sought to apply it to the so-called cooperative organizations as they now exist with all the differences from the pure cooperatives which have been pointed out. In so far as the modern highly developed, highly complex so-called cooperative organizations and their various methods of operating and carrying on trade or business are concerned, the theory or analogy of principal and agent breaks down. They are in reality complex trading organization, which, in law and in common sense, are no more the agents of their members or of

others supplying them with commodities, than an ordinary joint stock company is the agent of its shareholders and of those from whom it procures its raw materials, supplies or other commodities.

"This is particularly the case in respect of so-called cooperative organizations which out of the proceeds of sale of the commodities in which they deal set aside reserves which are completely under the control of the management of the organization, both as to the administration and disposal thereof.

"It is submitted that particularly with regard to these organizations the argument that they make no profits because they are agents only, falls to the ground.

"Representatives of certain of the so-called cooperative organizations have recently threatened in effect that if they are called upon to pay income tax they will so organize and operate that they will show no profit.

"This many of them will be able to do as by reason of the large reserves which they have built up they will be able to forego profits and take losses.

"It is submitted that the agency argument mentioned above, and the threat just referred to, emphasizes the necessity and propriety of making such organizations liable to taxation.

"If, therefore, by means of a legal fiction or of their putting into effect that threat, these organizations can continue to evade income tax, some other form of taxation should be applied to them so that:

"(i) They will bear their share of the burden of expense of running the country;

"(ii) Their method of doing business will not be given an unfair advantage from a tax point of view over other legitimate methods of doing business; and

"(iii) They will not be given by the state other unfair advantages over their competitors in business.

"The whole respectfully submitted."

BY MR. HEWARD:

Q. That is signed by whom? A. By me and by Mr. Murphy.

BY MR. BROSSARD:

Q. Since it is already after four o'clock, and the memorandum is principally argument; since my confrere Mr. Heward I think is anxious to go back to Montreal, I shall endeavour to limit my questions as much as possible. You have stated, Mr. Short, that the capacity of the mills of the members of your association represents 88 per cent of the total capacity of the Canadian mills? A. That is right.

Q. Have you any idea as to what is the capacity of the mill belonging to the cooperative organization, which you have mentioned? A. It is infinitesimal.

Q. It represents -- ? A. Nothing. It is simply cited as an example.

Q. So that as far as your particular industry is concerned, the cooperative movement has not so far, at any rate, constituted any competition whatever? A. That is right. We appear in the face of the threat.

Q. And it is because of the threat, and particularly because of the threat which arises out of the proposal of the Saskatchewan Pool to construct and operate a mill, that you consider your intervention necessary? A. That is right.

Q. On pages 14 and 16 of your brief you suggest that the ultimate extension of the cooperatives to all ordinary businesses is to be feared. A. I think it is.

Q. And you repeat that statement on page 16? A. I think it is.

Q. Surely that statement is not based upon any experience of yours, in your own company or your own particular sphere?

A. No; not yet.

Q. We have often heard that statement. A. Yes.

Q. Is it to your knowledge that at the present time, particularly in recent years, private enterprise has suffered to any extent in the way of reduction of its affairs at the hands of the cooperatives? A. I am presenting a brief for the milling industry, in the face of the threat to the milling industry. My personal opinion is that business cannot withstand for long the growth of the cooperative movement. It is obvious to me that if two competitors, engaged in business along exactly analogous lines, one of them being restricted in his profits and in his expenditures, subject to taxation, must be at a disadvantage as compared with the other, who is allowed to build up his working capital and his profit through an exemption from taxation.

Q. Would you say that the nine or ten members of the Canadian National Millers Association, or the fifty-eight odd members of the Ontario Flour Millers Association, have in recent years, or in the course of the last ten years, been able to accumulate any reserves? A. I have answered that question, that the mills have not yet suffered from the cooperative movement.

Q. But I am asking whether some of those members of the two associations have not found it difficult in the past, without any competition from the cooperatives, to accumulate reserves, and yet have been able to carry on business?

A. Yes.

Q. So the accumulation of the reserves or non-accumulation of reserves would not necessarily result in the disappearance of any one of these enterprises?

A. I do not quite follow that argument. The mere fact that the milling industry has had its difficulties does not

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mean they are utterly complacent toward a future competition confronting them, which enters the field with very great advantages for them, competitively.

Q. But your fear of the so-called unfair competition by the cooperatives appears to be based on the fact that while they would be able to accumulate reserves, private enterprise would not be able to accumulate such reserves to a similar extent, because of taxation?

A. Quite right.

Q. And that therefore this disadvantage would necessarily, in the long run, result in the disappearance of private enterprise? A. Almost inevitably.

Q. I am asking you whether your past experience in this business is to the effect that the lack of ability to build up reserves has necessarily resulted in the disappearance of any private enterprise? A. Not to my knowledge; not in the milling industry.

Q. It has not? A. No, not yet; we have not been confronted with it.

Q. So is not that fear of competition by the cooperatives a bit exaggerated on the part of your members? A. I think not. No.

Q. I should like you to emphasize perhaps a little more on exactly what you base that fear of competition by the cooperatives? A. Well, anything I have to say is sheer redundancy, as it is all expressed in the brief. If milling is done cooperatively, with the cooperatives enjoying a freedom from taxation, they are automatically in a preferred position in competition with the mills who have to pay taxation. To me that is quite obvious. If a mill is paying \$100,000 in income tax and another is exempt from income tax, the second will add \$100,000 to its liquid

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position, and it will be that much stronger. We have seen this cooperative movement. It has built up surpluses and is going into other businesses. It has built up those surpluses chiefly through this exemption from taxation.

Q. Granted that the movement has developed and has gone into other fields. Has it resulted so far in a corresponding diminution of the business carried on by private enterprise in any sphere whatever, to your knowledge?

A. I am in the milling industry. As to my knowledge of other spheres, I do not know; they must speak for themselves. In so far as the milling industry is concerned, we have experienced cooperative competition only in the one place, and I cite that merely as an example because relatively it is very small.

Q. I am coming to that one cooperative. While I do not wish to question your statements, I should like you to tell this commission where you secured the information which is given in your brief in regard to this one cooperative?

A. Where I secured the information?

Q. Yes, that it has not been taxed so far?

A. It was stated before this commission by the manager of the Outlook mill, or by the manager of the Pool.

Q. That may be a fact; I was not here.

A. He also stated that his business was fifty per cent domestic and fifty per cent export.

Q. So that information is based upon evidence which was placed before this commission? A. Obviously. How else could I get it?

Q. I was not here at the time, so I would not know. It is based upon that evidence? A. Most decidedly.

Q. And I understand -- . A. And if I remember rightly he said he had his fingers crossed.

Q. If I remember rightly the procedure followed by this cooperative, it purchased No. 1 wheat from its members at a price of \$1.25 per bushel ? A. From the wheat board; that is the only person who sells wheat.

Q. It pays that amount and recovers the difference --

A. Yes, the difference between 77-3/8 cents and \$1.25 for No. 1 Northern. That is always the basis.

Q. But there is a different subsidy for other grades ?

A. No, it is the same subsidy, because it is all on the basis of No. 1 Northern.

Q. And the cooperative uses that wheat and makes flour ?

A. Yes.

Q. And divides its gain, or whatever you call it, between its members ? A. That is right.

Q. Your contention is that in so far as processing is concerned, it no longer gives an operation which is exempt under the law ? A. That is our contention.

Q. Now I am coming to these six or seven propositions of yours. Your first proposition, which I take it is the basic proposition of your brief -- ?

A. In respect to the milling industry; yes.

Q. As far as the milling industry is concerned, your first proposition is that milling cooperatives have never enjoyed exemption under the act ? A. That is so.

Q. Those cooperatives have never enjoyed this exemption ?

A. Yes.

Q. If I understand your contention, it is that notwithstanding this submission on your part, this one organization has up to the present benefited from an exemption, which you say should not have been granted to it ?

A. Yes. I merely cited it by way of example, in the

1881

Jan 1st to 31st

Feb 1st to 28th

Mar 1st to 31st

Apr 1st to 30th

May 1st to 31st

Jun 1st to 30th

Jul 1st to 31st

Aug 1st to 31st

face of the threat.

Q. Assuming that your first proposition is correct in law, I am not discussing it --. A. I am not a lawyer.

Q. Your third proposition (c) would therefore apply only to primary producer cooperatives?

A. That is right.

Q. That is when you say there should be no distinction in regard to tax liability as between cooperative associations or organizations and joint stock companies? A. Yes.

Q. That would be restricted to primary producers?

A. Yes, because we maintain that under section 4(p) only the primary producer is exempted.

Q. Then may I ask whether all members of your association are unanimous in recommending to this commission that there be no exemption of whatever nature in favour of any kind of primary producer cooperative?

A. Of any kind of primary producer cooperative? I cannot answer for every member of the association, except to say that they endorsed the brief and that I am here instructed by them to present it.

Q. Has the brief been endorsed by the two associations, as associations? A. Yes.

Q. Or by every member of each of the two associations that you represent? A. I could not tell you in regard to the Ontario Flour Millers, what their procedure is; I am not a member of that body. The brief is signed by the president and secretary of that association. In regard to the Canadian National Millers Association, of which I am a director, I state most positively Yes.

Q. By each of them? A. Yes.

Q. Therefore each of those members suggests that primary producer cooperatives, whether they be what you call

true cooperatives or so-called cooperatives, should not benefit from any exemption whatsoever? A. To-day.

Q. That is your statement? A. Yes; to-day.

Q. Your seventh submission is that even if it should be contended successfully that cooperatives should benefit from some kind of exemption from the two acts with which we are particularly concerned, you recommend that then some other form of taxation should be applied to cooperatives. Has your association any concrete suggestions to offer in regard to this other form of taxation? A. No. If I might be allowed to say what is in my mind, our belief is that when section 4(p) was introduced in 1931 there was need for the relief of the farmer. Nobody objected to it. The income tax then was only eight per cent. It was a mere pimple on the neck of the individual or the neck of business. Nobody had the forward sight to know that that pimple would become an over-sized carbuncle; and while ordinary business could tolerate an exemption of ten per cent, it is now our belief that the cooperatives have far transcended the operations granted them in respect to exemption under this section 4(p), and business now is at an extraordinary disadvantage in the face of any threat of cooperative competition. That is the way we see it. It is obvious to me that two people engaged in identically the same business, conducting their affairs in an analogous fashion: if one of them is going to be exempt from taxation and the other has to pay taxation, one has a distinct advantage over the other.

Q. Yes, but you have not answered my question yet, as to whether you had anything concrete to suggest, anything definite to suggest in the way of other taxation, any other form of taxation? A. No. I do not think it comes within

our purview.

Q. I am asking you whether you would have any suggestions?

A. No. I do not think it comes within our purview.

Q. The only suggestion is that some taxation should be imposed so that they will not constitute such a terrible threat against private enterprise? A. Yes. Not only a terrible threat, but that they should not continue to enjoy such an unfair advantage.

Q. That is not the case in so far as your particular industry is concerned, because they have not been a terrible threat? A. No. I stressed the point that the consumers' cooperative is merely cited by way of example. If that condition existed in a mill of reasonable size, it would indeed be a competitive threat.

Q. Just one or two more questions. At page 6 of your brief you have quoted from special lectures to the Law Society of Upper Canada? A. Yes.

Q. I wanted to know who was the author of those quotations? A. That was Mr. Stikeman, of the Income Tax Department.

Q. You have said at page 21 of your brief that representatives of the so-called cooperative organizations recently have threatened in effect that if they are called upon to pay income tax they will so organize and operate that they will show no profit. Did you have any particular organization in mind? A. That was brought out and confirmed in evidence to-day, was it not, under cross-examination.

Q. That is a question of interpretation. I do not know that any such statement was made during to-day's proceedings.

MR. HEWARD: I think perhaps I can find something to support that. I believe it was in Exhibit 5. That statement is based upon the statement in the Western Producer,

which we had before us at the time.

BY MR. ELLIOTT:

Q. In connection with your proposition (f), where you envisage the possibility of some cooperatives carrying on so that they make no profits, do I understand you to argue that in that case a tax computed on the basis of income or profit would not be a fair tax? A. Yes. There should be some other method devised, turnover or some other fashion.

Q. In the case of a joint stock company that makes no profit in a particular year, do you consider that company to enjoy an unfair advantage in tax matters over the company which does make a profit? A. No, sir, I do not. I do not see any analogy there, either.

Q. Neither one makes any profit, and neither one pays any tax? A. In the one case it may be inefficiency in management that brings about that result. They have the same opportunity to make money as their competitors, under the same terms; but the cooperatives are not under those same terms.

Q. But this is the case of a tax being imposed upon cooperatives, but nevertheless they will cut their prices, shall we say. Just come back to that point. Do I understand, then, that your distinction hinges upon this, that if an ordinary company through inefficiency should make no profits it should not be taxed, but that if a cooperative purposely makes no profits it should be taxed? A. No. That distorts my meaning.

Q. Then would you explain? A. You put a hypothesis to me, and I said it might have resulted from inefficiency of management. Unfortunately at this present time there is a premium on inefficiency, as shown by the board of referees in assessing base profits. But I really do not know just how to answer you. Two firms operating under taxation,

if one of them fails to make profits while the other one does, that result may arise from any one of a multiplicity of reasons. It may arise from a lesser quality of product; it may arise from a less efficient organization.

Q. In those cases would you say it should be taxed on something? A. The efficient organization would say most decidedly that it should.

Q. I am asking you about your association? A. And then it would result in the survival of the fittest.

BY THE CHAIRMAN:

Q. It may arise from taxation? A. It may and does arise, in the case of which I am speaking, from taxation.

BY MR. ELLIOTT:

Q. But not from income tax? A. Yes, I think so.

Q. Zero profits cannot be achieved in that way? A. No; that is positively so.

Q. Then would you take a case and explain to me on what basis you would say that a cooperative which, otherwise being subject to income tax, operated so as to have no income, should be taxed in some fashion, while a non-cooperative, an ordinary company which made no profits and was liable for income tax, should not be taxed, because I understand that is your suggestion. A. Are you suggesting that in both instances the case is identical, that in both instances it arises from a desire not to make profits?

Q. I am asking you to draw the distinction. I am not trying to draw it for you. A. I cannot imagine, on the one side, any joint stock company with shareholders, who are a very clamorous bunch in respect to returns on their investment, deliberately operating its business so inefficiently that it makes no profits. I cannot envisage such a state of affairs.

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Q. It is difficult to imagine. A. But I can see on the part of the cooperatives, through their method of doing business, where they could arrive at a state where they had no taxable income.

Q. Then you make the distinction to turn upon whether the lack of profits is intentional or not? A. Yes, I do.

Q. And if it is intentional they should be taxed in some way? A. They should be taxed; and if they are taxed, the tax would apply to everybody.

Q. Do you think it would be easy administratively to decide that point, if you used your contention as a basis of taxation? A. Frankly I do not appear here as a line elevator operator. I have simply presented a brief, and tried to keep it in generic terms. The only specific reference I have made is by way of example, to the consumers' cooperative mill. I understand reasonably well the question of patronage dividends, but I have not gone into it. I think others, far better qualified to speak than I, are coming after me to deal with that matter.

Q. Thank you very much. A. I have tried to answer your questions.

BY MR. ARNASON:

Q. I wonder whether you would permit two or three questions on your brief and certain sections of the Income War Tax Act. In your brief you deal rather extensively with section 4(p) in so far as it affected marketing cooperatives, if I understand you correctly. Are we to understand that you take the same attitude with regard to paragraph (b) which deals with purchasing cooperatives?

MR. HEWARD: May I point out in that regard that we particularly stated that we only dealt with marketing agencies, That is stated in the brief.

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THE WITNESS: We just referred to that part of it which affected the milling industry.

BY MR. ARNASON:

Q. I just wanted to establish that clearly. I take it, then, that you have no opinions to express with regard to the exemption granted to credit unions or mutuals?

A. No, sir.

Q. Or retail cooperators who may be buying flour from the members of your association? A. No, sir; we confined it to the one issue.

BY MR. FRANCIS:

Q. As counsel for the Consumers Cooperative Mills I should like to ask one or two questions, and I mean one or two. Mr. Short, we have a statement in the evidence to which you have referred, on page 1362; that is in the evidence given in Saskatchewan. The statement was made by one of the counsel representing private interests, and it was to this effect: "We do know that the milling business is a very profitable one at the present time." He then asked the witness whether that was a fact, and the answer given by the general manager of the mill was, "We have yet to find it out."

You probably know from your investigations that this mill was organized in 1939, and that it has been operating since that time? A. Yes.

Q. You probably know that it has not been very successful, or are you aware of that? A. I am well aware of the history of the mill; but it was not a cooperative mill in 1939, was it?

Q. It is in the same form as it has always been, I suggest; the evidence shows that. With regard to the statement made by counsel to which I have referred, that

the milling business is a very profitable one at the present time, is that correct? A. It is not correct. I have tried to explain in the brief that we are restricted to our base profits on milling.

Q. That is, your standard profits? A. Yes. The whole milling economy is a subsidized one, arising out of the involuntary position in the domestic market and the abnormal export production under Mutual Aid, which is also nationally subsidized.

Q. That was explained in the evidence. My instructions are that the standard profit for the milling industry was very satisfactory. Is that correct? A. To whom?

Q. To the milling industry? A. It certainly is not to me. I do not know whether it is to others.

Q. It is not satisfactory? A. I would say not.

Q. What was the standard profit? A. I do not know whether I am in the right church or not. I think I am in the right church, but I do not know whether I am in the wrong pew. I did not know the milling industry was under investigation here.

MR. HEWARD: I would submit that we are not prepared, in the first place, to give evidence as to what the profits or losses of the milling industry are or have been, and I do not think we should be called upon to give evidence as to what are our standard profits. Nor do I think we should be called upon to attempt to give evidence as to what are the standard profits of the other mills, even if we knew them; and I object to the question.

MR. FRANCIS: May I refer to page 11 of the brief of my learned friend, and I quote:

"The milling industry has operated at its peak production throughout the war to furnish flour required

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by Britain and our allies, and in its previous history never has worked under comparable pressure. Despite this fact, it has voluntarily agreed, as above stated, to a restriction of its earnings to 116-2/3rds per cent of standard profits (less 40 per cent taxation) -- "

Q. I take it that in your opinion that is not satisfactory. That is what I wanted to get at?

A. I do not know why you should take it that my thoughts are along any line. I told you in this brief that we had effected an agreement voluntarily with the government, which we did. I have merely pointed out on page 11, by way of an example, the discrimination as between a mill running under the cooperative methods and the rest of the milling industry. The Consumers' cooperatives small mill, in their own evidence stated they were operating fifty per cent export, from which one would deduce that they had not enough domestic customers to take care of more than fifty per cent of their business. On that end of it they are subsidized involuntarily, as is the rest of the milling industry, under this price ceiling. The other fifty per cent of their business is accounted for under Mutual Aid, in respect to which they are again working under a subsidized economy, as Canada is paying for all the Mutual Aid. My point is that arising out of this fifty per cent domestic plus fifty per cent export, they have an abnormal grind, that is abnormal as contrasted with pre-war years, out of which they are making better -- I do not like the word "profits" if you object to it, but by any other names it smells as sweet. Call them savings or earnings; they are enjoying a very distinct and different treatment to the rest of the milling industry. At the moment it is only

a t 250 barrel mill, and there is nothing to worry over very greatly, but the point is there.

Q. One other question. Are you aware that a great many cooperatives are taxed and do pay income tax? That is a matter of evidence. Many cooperatives pay income tax. I should like to refer you to the evidence on the point, in connection with the mill, at page 1360:

"Q. Has the Consumers Cooperative mills filed income tax returns? A. Yes.

"Q. For these years? A. Yes.

"Q. And you have not been assessed? A. Not yet." I suggest to you that a lot of the assessments are behind, and it is quite probable that this particular mill will pay income tax. A. Well, it will be very just if they do. I shall begin to believe in justice.

THE CHAIRMAN: That was the gentleman who crossed his fingers, was it not?

THE WITNESS: Yes, my lord.

MR. FRANCIS: I was going to read the rest of the answer:

"We are keeping our fingers crossed."

Q. I suggest to you, Mr. Short, that there is nothing in the record of this mill or in its present position that is in the nature of a threat to the milling industry of this country? A. I have stated that very clearly.

THE CHAIRMAN: Is that your submission, Mr. Heward?

MR. HEWARD: That is our submission, my lord.

THE CHAIRMAN: What is the order of business for to-morrow?

MR. PARKER: It is to be either Alberta or Manitoba.

I think counsel were to indicate which it would be.

MR. PORTER: We are going on to-morrow.

THE CHAIRMAN: I have not read your brief, Mr. Porter.

It arrived rather late in the day, and none of us has read it.

MR. PORTER: We arranged between ourselves that we would go on to-morrow morning.

THE CHAIRMAN: Very well. '

The Commission adjourned, to meet on Wednesday,
April 25, 1945 at 10 a.m.

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